

Second, interpreting “whoever” to exclude the President in the obstruction and incitement statutes is consistent with the purposes of the immunity doctrine. In granting civil immunity to public officials, the Court has repeatedly concluded that absolute immunity for official acts prevents officials from hesitating to exercise the discretion inherent in their duties. *See Spalding v. Vilas*, 161 U.S. 483, 499 (1896) (Postmaster General); *Pierson v. Ray*, 386 U.S. 547 (1967) (state judges); *Imbler v. Pachtman*, 424 U.S. 409 (1976) (state prosecutors). While absolute immunity is reserved for officials with particularly sensitive responsibilities—such as judges, prosecutors, heads of executive branch departments—the Court also recognizes immunity for other public officials for acts performed in good faith. *See Butz v. Economou*, 438 U.S. 478 (1978) (federal executive officials); *Pierson v. Ray*, at 557 (police officers). *See also Harlow v. Fitzgerald*, 457 U.S. 800 (1982) (establishing an objective standard for the qualified immunity “good faith” inquiry). Time and again the Court has acknowledged that the public interest suffers when government officials second-guess their decisions. *Id.* Where civil damages liability distorts decisionmaking, criminal liability incentivizes even greater caution. If immunity from criminal liability is imaginable—even if only for official acts—it is equally plausible to exclude the President from criminal laws of general applicability as a matter of statutory interpretation.

Lastly, excluding the President from the obstruction and incitement statutes does not place an insurmountable burden on Congress that would render the interpretation impossible or unacceptable. Congress could easily amend the obstruction and incitement statutes to include the President. To preempt statutory ambiguity in the future, Congress could pass a law clarifying that the term “whoever” includes the President of the United States in all statutes in which the word appears. This law would be similar to the Dictionary Act, in which Congress clarified that “in determining the meaning of any Act of Congress, unless the context indicates otherwise— . . . ‘whoever’ include[s] corporations . . . as well as individuals.” 1 U.S. § 1. Given the separation of

powers issues at stake when laws potentially chill presidential conduct, Congress should make a conscious choice whether to sweep broadly or to carefully consider every statute's effect on the President.

**C. The clear statement rule would require an express statement by Congress before applying the obstruction and incitement statutes to a sitting President's official conduct.**

**1. The Supreme Court established a clear statement rule in *Franklin v. Massachusetts*.**

Bolstering the constitutional avoidance argument, the clear statement rule established in *Franklin v. Massachusetts* guides the Court to exclude the President from the scope of the obstruction and incitement statutes. 505 U.S. 788 (1992). In *Franklin*, the Court considered whether the term “agency” in the Administrative Procedure Act included the President, thus subjecting the President's actions in the reapportionment process to judicial review. On the issue of reviewability under the APA, the Court stated that it “would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion.” *Franklin*, at 801. Assuming the President was included in the statute would raise significant separation of powers concerns and the Court was not willing to let “textual silence” dictate such a result. *Id.*

In creating the clear statement rule, the *Franklin* court cited a footnote from *Nixon v. Fitzgerald* which implied that the Court could approach presidential immunity differently in circumstances where Congress had created an express cause of action against the President. *Fitzgerald*, at 748 n.27 (1982). The *Fitzgerald* court acknowledged that the disposition of the case assumed an implied cause of action, requiring the Court to reach the question of absolute presidential immunity from civil damages liability. The tenor of footnote 27 suggests that, had the Court presided over the *Fitzgerald* case itself, it might not have found that an implied cause

of action existed in the first place. *Franklin* expounds upon this sentiment to flesh out the bounds of the clear statement rule.

In its motion to dismiss, the government states that neither *Franklin* nor *Public Citizen* “announces such a rule nor rests its holding on such a rule,” R:3 at 301, begging the question—if the Court intended to announce a “clear statement rule,” why did it not explicitly say so? Yet, the *Franklin* court emphatically and consistently announced its intentions. In half a page the Court stated three separate times that it would require an express statement by Congress before proceeding: “[T]extual silence is not enough to subject the President to the provisions of the APA;” “[W]e would require an express statement by Congress before assuming it intended . . . review[] for abuse of discretion;” “As the APA does not expressly allow review . . . we must presume that [the President’s] actions are not subject to its requirements.” *Franklin*, at 800–01. Also, the clear statement rule is a natural extension of the longstanding constitutional avoidance canon. The rule uniformly sidesteps the specific constitutional issue created when federal statutes are applied to the President—that is, potential disruption of the proper balance of power between the branches of government. The *Franklin* court clearly explained that Congress must expressly signal its intent to include the President in generally applicable statutes. *Id.*

[ . . . ]

**Applicant Details**

First Name **Daniel**  
 Middle Initial **A**  
 Last Name **Mirabelli**  
 Citizenship Status **U. S. Citizen**  
 Email Address [danmirabelli17@gmail.com](mailto:danmirabelli17@gmail.com)  
 Address

**Address****Street****128 MacDougal Street #2B****City****New York****State/Territory****New York****Zip****10012****Country****United States**

Contact Phone  
 Number **8474145699**

**Applicant Education**

BA/BS From **University of Illinois-Urbana-Champaign**  
 Date of BA/BS **May 2016**  
 JD/LLB From **University of Virginia School of Law**  
<http://www.law.virginia.edu>  
 Date of JD/LLB **May 23, 2021**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Virginia Journal of Criminal Law**  
 Moot Court  
 Experience **Yes**  
 Moot Court  
 Name(s) **William Minor Lile Moot Court Competition**  
**The Irving R. Kaufman Memorial Securities**  
**Law Moot Court Competition**

**Bar Admission**

Admission(s) **New York**



### **Prior Judicial Experience**

Judicial Internships/  
Externships **No**  
Post-graduate  
Judicial Law Clerk **No**

### **Specialized Work Experience**

### **Recommenders**

Spiro, Bethany  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Daniel A. Mirabelli  
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May 30, 2023

The Honorable Juan Ramon Sánchez  
United States District Court for the Eastern District of Pennsylvania  
14613 U.S. Courthouse  
601 Market Street  
Philadelphia, Pennsylvania 19106


Dear Chief Judge Sánchez:

I am a second year Assistant District Attorney at the Manhattan District Attorney's Office and a 2021 graduate of the University of Virginia School of Law. I am writing to apply for a clerkship in your chambers in September of 2024. A clerkship in your chambers particularly interests me due our shared experience in public service and my strong desire to remain on the East Coast and continue to build upon the professional and personal relationships I have forged here.

I am enclosing my resume, law school transcript, and a writing sample. You will also be receiving letters of recommendation from Assistant District Attorneys Samuel David ((347) 513-5661), Mary Ellen Nocero ((631) 793-3830), and Bethany Spiro ((212) 335-9245).

Please let me know if I can provide any further information. Thank you in advance for your time and consideration.

Sincerely,



Daniel A. Mirabelli

**Daniel A. Mirabelli**

128 MacDougal St., #2B, New York, NY 10012  
DanMirabelli17@gmail.com | (847) 414-5699

**EXPERIENCE**

**Manhattan District Attorney's Office, New York, NY**

*Assistant District Attorney, September 2021 – Present*

- Prosecuted over 400 felony and misdemeanor offenses ranging from white collar to violent crimes
- Tried three jury trials to verdict and indicted over ten cases through grand jury presentations
- Drafted over 500 criminal complaints, dozens of so-ordered subpoenas, and multiple 18 U.S.C. § 2703 orders
- Drafted over ten search and seizure warrants for electronically stored information, firearms, narcotics, social media, cellular sites, financial records, contraband, and scientific sample analysis
- Drafted over fifteen motions concerning dismissal, reargument, plea vacatur, and suppression

**United States Attorney's Office for the Eastern District of Virginia, Richmond, VA**

*Legal Extern, January 2021 – May 2021*

- Appeared in federal court for arraignment, initial appearance, and plea agreement hearings
- Drafted memoranda on issues including searches of electronically stored data, conflicts of law, and sentencing
- Drafted multiple responses to motions for compassionate release
- Researched topics including sentencing guidelines, scope of consent to search, and Hobbs Act issues
- Assisted in the preparation of evidence for COVID-19 relief fraud and observed reverse proffer

**Charlottesville Commonwealth Attorney's Office, Charlottesville, VA**

*Legal Extern, September – December 2020*

- Tried a felony jury trial to verdict as second chair utilizing a third-year practice certificate
- Prepared witnesses for trial, reviewed evidence, and prepared memoranda on various issues

**United States Attorney's Office for the District of Maryland, Greenbelt, MD**

*Law Clerk, May 2020 – August 2020*

- Drafted memoranda on Fourth Amendment issues, firearm trafficking venue, and Touhy regulations
- Conducted research on “ghost guns”, wire fraud, obstruction of justice, and sentencing enhancements
- Reviewed search and seizure warrants for social media and email provider accounts in relation to wire fraud

**Levine Bagade Han LLP, Palo Alto, CA**

*Summer Associate, June – August 2019*

- Drafted multiple office action responses and continuing patent application claims for the U.S. Patent and Trademark Office that concerned a range of technical fields
- Analyzed client designs as compared to prior art to develop arguments for patent prosecution

**Cook County State's Attorney's Office, Felony Trial Division, Chicago, IL**

*Law Clerk, January 2019*

- Reviewed and organized evidence for homicide, sexual assault, and other felony cases

**Navistar, Inc., Lisle, IL**

*Electrical Systems Engineer, May 2016 – July 2018*

- Simplified complex electrical systems into wiring diagrams to be used by non-engineers
- Led team of four engineers to develop wiring diagrams for new vocational truck line

**EDUCATION**

**University of Virginia School of Law, Charlottesville, VA**

*J.D., May 2021*

- *Virginia Journal of Criminal Law*, Managing Board: Senior Articles Editor
- Extramural Moot Court, Director of Programs & Competitor

**University of Illinois, Urbana-Champaign, IL**

*B.S., Mechanical Engineering, May 2016*



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Daniel Anthony Mirabelli

06/09/2021

Date Printed

COURSE NUMBER	COURSE TITLE	GRADE	CREDITS	COURSE NUMBER	COURSE TITLE	GRADE	CREDITS
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**Issued / Mailed To:**

DANIEL ANTHONY MIRABELLI

School:	School of Law		
Major:	Law		
LAW 6106	Federal Income Tax	CR	4.0
LAW 7005	Antitrust	CR	4.0
LAW 7019	Criminal Investigation	CR	3.0
LAW 7071	Professional Responsibility	CR	2.0
LAW 7131	Criminology	CR	3.0

**2020 Fall**

School:	School of Law		
Major:	Law		
LAW 6103	Corporations	B+	4.0
LAW 6105	Federal Courts	B+	4.0
LAW 8622	Prosecution Clinic (YR)	CR	4.0

**2021 Spring**

School:	School of Law		
Major:	Law		
LAW 6102	Administrative Law	A-	4.0
LAW 7123	Class Actions/Aggregate Litgtn	A	3.0
LAW 7827	Global Bus & Corruption (SC)	A-	1.0
LAW 8623	Prosecution Clinic (YR)	B+	4.0

**Degrees Conferred**

Confer Date: 05/23/2021  
Degree: Juris Doctor  
Major: Law

**Beginning of Law Record**

**2018 Fall**

School:	School of Law		
Major:	Law		
LAW 6000	Civil Procedure	B	4.0
LAW 6002	Contracts	B+	4.0
LAW 6003	Criminal Law	B+	3.0
LAW 6004	Legal Research and Writing I	S	1.0
LAW 6007	Torts	B+	4.0

**2019 Spring**

School:	School of Law		
Major:	Law		
LAW 6001	Constitutional Law	B+	4.0
LAW 6005	Lgl Research & Writing II (YR)	S	2.0
LAW 6006	Property	B+	4.0
LAW 6104	Evidence	B+	4.0
LAW 7160	Computer Crime	A	3.0

**2019 Fall**

School:	School of Law		
Major:	Law		
LAW 7067	National Security Law	A-	3.0
LAW 7111	Con Law II: Survv/Civl Liberty	A-	3.0
LAW 9081	Trial Advocacy	B+	3.0
LAW 9182	International Law/Use of Force	B+	3.0

**2020 January**

School:	School of Law		
Major:	Law		
LAW 7797	Sanctions and Boycotts (SC)	B	1.0

**2020 Spring**

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.



*Laura Hawthorne*  
UNIVERSITY REGISTRAR



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**

May 1, 2023

To Whom It May Concern:

It is with great pleasure that I recommend Daniel Mirabelli for a clerkship position in Your Honor's chambers. I am an Assistant District Attorney (ADA) at the New York County District Attorney's Office and I have had the privilege of supervising Daniel since the fall of 2021.

I was Daniel's Criminal Court Supervisor (CCS) during his first year working as an ADA, from the fall of 2021 through the summer of 2022, and throughout that time I supervised Daniel's work on all of his misdemeanor cases and investigations. Now, as Supervising Attorney in the Sex Crimes Unit, I supervise his work on misdemeanor sex crimes cases. Daniel's responsibilities include carrying a caseload of approximately 100 cases, including but not limited to domestic violence, sex crimes, driving while intoxicated, assaults, thefts, and forged instruments. His work on these cases includes thoroughly investigating them by gathering evidence and meeting with witnesses, then finding a just resolution or litigating the case at trial. Daniel also handles pre-arrest investigations, which require him to determine what, if any, charges can be proven, decide whether to authorize an arrest, and handle the case moving forward if an arrest is made.

From day one, Daniel stood out from his class of eight ADAs in our Trial Bureau. He is passionate about the work he is doing, often volunteering to take on additional cases and investigations and working late nights and weekends when necessary. More importantly, his oral and written litigation skills are far above what is expected for a junior ADA. He has successfully orally argued issues regarding orders of protection, has tried cases to verdict, and has presented cases to the grand jury. Daniel has also successfully litigated a variety of pre-trial and post-trial issues in written motions. As his supervisor, whenever a complicated legal issue arises or investigation needs to be assigned, I am confident that he can handle the work and he quickly became one of my go-to ADAs. He is also a mentor to the younger ADAs and provides them with excellent guidance and advice on their cases and investigations.

Daniel's incredible work ethic and passion will serve him well in a clerkship. I strongly recommend him for the position in Your Honor's chambers. Please do not hesitate to contact me if you would like to discuss Daniel's qualifications further.

Sincerely,

*Bethany Spiro*

Bethany Spiro  
Assistant District Attorney  
(212) 335-9245

New York County District Attorney's Office  
1 Hogan Place  
New York, NY 10013

June 8, 2023

To Whom It May Concern:

I write in strong support of Daniel Mirabelli's application to be a law clerk. Dan joined the Manhattan District Attorney's Office in 2021, serving in one of its trial bureaus, where I was a deputy bureau chief. I thus directly supervised Dan from 2021-2023, and closely observed his work. In 2023, I was promoted to be the bureau chief of another bureau, and sadly, am no longer working directly with Dan.

Dan is a skilled lawyer, with a keen intellect and abiding commitment to serving the public interest. During his time at the Manhattan District Attorney's Office, Dan quickly moved from handling misdemeanor cases to handling felonies. He was the lead attorney on a number of significant misdemeanor trials, including a "driving while intoxicated" (DWI) case and a "forcible touching" case where the defendant had nonconsensual contact with the victim's genitalia. Dan has been the "second chair" on some very serious felony cases, including a trial case in which the defendant attempted to push the victim onto subway tracks. On top of these trials, Dan has done extensive pre-arrest investigative work, including drawing up search warrants for residences, electronic devices, and social media profiles. His felony caseload has included domestic violence assaults, firearms possession, and other serious incidents.

As one of Dan's supervisors, I would regularly review the cases he picked up with him, discuss the factual and legal issues in the cases, and plan next steps. I found Dan to have an incisive intellect: he readily identified the key factual and legal issues in the cases he was assigned and thought carefully about next steps. Equally important, he operated from a balanced position in which fairness for defendants was a core guiding principle along with empathy and compassion for victims.

Dan's ability to cogently analyze cases was also manifest in his written work. He responded to numerous motions, some of which required substantial legal research. I supervised him on a New York State CPL 440.10 motion – a motion to vacate a conviction – that raised a novel issue: the defendant claimed his plea was not knowing and voluntary because he had not been informed that he would have to give a DNA sample. Dan thought carefully about the issues, delved into the case law, and wrote a convincing response. This is just one example of Dan's strong research and writing abilities.

Dan's legal skills are matched by his ethic of public service. Prior to coming to the Manhattan District Attorney's Office, Dan had interned in state and federal prosecutorial offices in Virginia, Maryland, and Illinois. Through a program at the District Attorney's Office, Dan has been a high school mentor. In that capacity, Dan met with his mentee once a week to provide guidance on school and career choices and general support. Dan is also doing the "Inside Criminal

Justice” course in which prosecutors and convicted incarcerated defendants study criminal justice issues together and develop a joint policy proposal to improve the system.

On top of all these great attributes, Dan is a warm and well-regarded colleague who is never hesitant to pitch in for other attorneys when they need help with a case or a court assignment. He is a pleasure to work with and supervise, and I think he would be an excellent law clerk.

If I can answer any questions or be of any further help, please do not hesitate to contact me either via email at [davids@dany.nyc.gov](mailto:davids@dany.nyc.gov) or phone at (212) 335-4084.

Sincerely,



Samuel David  
Bureau Chief, Trial Bureau 80  
New York County District Attorney's Office



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**

April 24, 2023

To Whom it May Concern,

It is my distinct pleasure to recommend Daniel Mirabelli for a clerkship within your chambers. I have had the pleasure of supervising Mr. Mirabelli since he joined the Manhattan District Attorney's Office in September 2021. In that time, I watched him grow into a knowledgeable attorney and valuable member of our Trial Bureau.

As Mr. Mirabelli's Criminal Court Supervisor, I have observed Mr. Mirabelli to be a dedicated advocate and a thoughtful investigator. He is a critical thinker and I trust him to thoroughly investigate his cases in a professional manner. I have had the opportunity to watch him passionately advocate for his cases during a jury trial. He was able to elicit detailed testimony from his witnesses and was able to artfully weave the facts of his case into a compelling narrative for the jury.

In addition to his courtroom skills, Mr. Mirabelli has excelled as a legal researcher and writer. With the change in the discovery laws in New York in 2020, our ADAs have had to pivot in our standard motion practice, responding to novel arguments by the defense bar. Mr. Mirabelli has proven himself to be an invaluable resource to our Trial Bureau, understanding how to craft thorough responses. I have relied on Mr. Mirabelli's comprehension of the new laws and judges' interpretation of them in order to guide his colleagues in their motion practices.

On a personal note, I find Mr. Mirabelli to be a kind and empathetic individual who always displays a positive attitude even on our most difficult days. Mr. Mirabelli is the first person to volunteer to help his colleagues and is a reliable team member. I have no doubt that Mr. Mirabelli will continue to excel as he pursues new opportunities in his career.

I strongly recommend Daniel Mirabelli for a clerkship. If you have any questions or would like to further discuss this outstanding candidate do not hesitate to contact me at (631) 793-3830.

Sincerely,

*Mary Ellen Nocero*

Mary Ellen Nocero  
Assistant District Attorney  
(631) 793-3830



### Writing Sample

The attached writing sample is a portion of a motion was filed with a Supreme Court of the State of New York by myself in my capacity as an Assistant District Attorney. It is a response to a defendant's motion for vacatur of the defendant's plea and sentencing, and dismissal of the indictment against him. Following the People's response, the defendant's motion was denied in its entirety and the defendant was compelled to provide a DNA sample. The portion attached concerns only vacatur of plea and sentencing, and was lightly edited by a supervising attorney, Assistant District Attorney Samuel David, one of my recommenders.

## MEMORANDUM OF LAW

Despite the prolonged discussions with Defendant which resulted in an offer of a plea to misdemeanor assault in the third degree on an indicted felonious assault in the first degree, Defendant now seeks to vacate his plea and seeks dismissal of all charges. Defendant's motion must be denied in its entirety.

**I. The Defendant's Guilty Plea was Voluntary, Knowing, and Intelligent because a DNA Sample is Not a Component of Sentencing.**

**a. Failure to Pronounce Non-Components of a Sentence Prior to a Plea Does Not Deprive Defendant of a Voluntary, Knowing, and Intelligent Decision.**

A defendant who enters a guilty plea must voluntarily and intelligently waive several federal constitutional rights, namely, the right to a trial by jury, the right to confront one's accusers and the privilege against self-incrimination. *Boykin v. Alabama*, 395 U.S. 238 (1969). *see* Exhibit D.<sup>1</sup> It is well settled that a guilty plea will be upheld if it was entered voluntarily, knowingly, and intelligently. *People v. Tyrell*, 22 N.Y.3d 359, 365 (2013). However, a guilty plea will not be invalidated solely because the trial judge fails to specially enumerate all the defendant's rights and elicit a list of detailed waivers. *Id.* Further, trial courts retain broad discretion in plea allocutions and need not follow a "rigid catechism". *Id.* at 366. Rather, the record must as a whole contain an affirmative demonstration of the defendant's waiver of his fundamental constitutional rights. *Id.* When the record shows that the defendant consulted with his attorney about the

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<sup>1</sup> All cases are attach in the order that they appear in Exhibit D.

constitutional consequences of a guilty plea, a valid waiver may be established. *Id.* at 365 (see *North Carolina v. Alford*, 400 U.S. 25 (1970)).

The Court of Appeals has been clear that if a consequence of a conviction is not a component element of sentencing, a court's failure to pronounce the consequences prior to an entry of a guilty plea does not deprive the defendant of making a knowing, voluntary, and intelligent decision. *People v. Hoti*, 12 N.Y.3d 742 (2009); cf. *People v. Catu*, 4 N.Y.3d 242 (1984). The distinction between a component and non-component of a sentence lies within the statutory text, location of the statute within the code, and whether it is a punitive measure. *People v. Guerrero*, 12 N.Y.3d 45 (2009); *People v. Sparber*, 10 N.Y.3d 457, 468-69 (2008); *People v. Nieves*, 2 N.Y.3d 310, 316 (2004). For example, the consequence of post-release supervision is a component element of a sentence; however, orders of protection are not component elements of sentencing. *Sparber*, 10 N.Y.3d at 468-69; *Nieves*, 2 N.Y.3d at 316. Therefore, a judge is required to pronounce the terms of the post-release supervision, but not the order of protection. *Sparber*, 10 N.Y.3d at 468-69; *Nieves*, 2 N.Y.3d at 316. At the time *Sparber* was decided, Penal Law § 70.45, included the words "as a part thereof" in reference to the relation of post-release supervision and a determinate sentence. 10 N.Y.3d at 468-69. In contrast, CPL § 530.13(4) – the statute governing orders of protection – did not characterize orders of protection as being a component of sentencing. *Nieves*, 2 N.Y.3d at 316. Thus, post-

release supervision is a component element of sentencing, the Court ultimately, found, while orders of protection are not.

Furthermore, through this statutory analysis, the Court held that fees including the mandatory surcharge, crime victim assistance fee, sex offender registry fee, and DNA databank fee found in CPL § 60.35(1) are not components of sentencing. *Guerrero*, 12 N.Y.3d at 48-49; *People v. Hoti*, 12 N.Y.3d 742 (2009).

Beyond statutory analysis, the Court has relied upon the purpose of consequences to pleas. *Guerrero*, 12 N.Y.3d at 48-49. It is particularly relevant whether the consequence is an additional punishment component of a sentence. *Id.* For example, CPL § 60.35 was enacted as a revenue-raising bill. *Id.* As such, the fees are not punitive and are not a component of sentencing. *Id.* In the same vein, orders of protection are not punitive, but rather are measures to assist victims and witnesses. *Nieves*, 2 N.Y.3d at 316.

If a consequence of a plea is not a component of a sentence, the failure to pronounce them prior to entry of a defendant's plea does not deprive the defendant of the opportunity to enter a plea of guilty knowingly, voluntarily, and intelligently. *People v. Hoti*, 12 N.Y.3d 742 (2009); *cf. People v. Catu*, 4 N.Y.3d 242 (1984). Therefore, if the defendant is not advised of the mandatory surcharge, crime victim assistance fee, sex offender registry fee, and DNA databank fees prior to entering a plea, his plea is still considered knowing, voluntary, and intelligent. *Hoti*, 12 N.Y.3d 742.

**b. Provision of a DNA Sample is Not a Component of Sentencing.**

Per Executive Law § 995-C(3)(a), “Any designated offender subsequent to conviction and sentencing for a crime . . . shall be required to provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and to be included in a state DNA identification index”.<sup>2</sup> The Second Department has addressed the precise question the defendant’s motion now raises and has held that the requirement to provide a DNA sample is not a component element of a defendant’s sentence. *People v. Cooks*, 107 A.D.3d 734 (App. Div. 2d Dept. June 5, 2013). Therefore, there was no requirement that this Court inform Defendant of the provision of a DNA sample, and the Court not doing so does not make Defendant’s plea infirm.

The holding of *Cooks* – that the provision of a DNA sample is not a component element of a sentence requiring discussion during a plea – was more recently upheld in *People v. Rana (Zahid)*. 2015 NY Slip Op 51029(U) (App Term, 2nd Dept, 2015). In *Rana*, the defendant said nothing that would raise a question as to his guilt or whether the plea was less than knowingly, intelligently, and voluntarily entered, and he admitted that he was pleading guilty because he was, in fact, guilty of the offense charges. *Id.* at 2. On the same day, the matter was recalled, after the defendant refused to provide a DNA sample,

<sup>2</sup> EL § 995-C(4) then directs commissioner of the division of criminal justice services, in consultation with other agencies to promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of the State DNA identification index.

and the Court informed the defendant that providing the DNA sample was mandated by law. *Id.* Defendant thereafter filed a motion to vacate the plea, and the court rejected the motion, reaffirming the holding of *Cooks*. *Id.* Therefore, the failure to inform the defendant of the requirement to provide a DNA sample prior to his plea does not impact whether it is voluntarily entered. *Cooks*, 107 A.D.3d at 735.

Defendant relies upon *People v. Gravino* and *People v. Peque* to argue that the requirement to provide a DNA sample is a direct consequence, and if it is not a direct consequence, it is a unique collateral consequence worthy of an allocution. 14 N.Y.3d 546 (2010); 22 N.Y.3d 168 (2013). This reliance is misplaced, as there is recent Appellate Division case law directly on point squarely holding the opposite. Nor is the holding of *Cooks* and *Rana* unreasonable. To the contrary, it is clear that the requirement to provide a DNA sample is not a consequence that fits within the direct and collateral consequence framework. This is because provision of the DNA sample is not punitive. To begin, unlike both the statutes in *Sparber* and *Nieves*, the statute governing the State DNA identification index does not reside within the Penal Law. Rather, it resides within the Executive Law, and simply directs that a DNA sample shall be required to be provided ***subsequent to*** sentencing. This language clearly designates that the DNA sample provision is not a component of the sentencing, but rather follows sentencing, similarly to the imposition of surcharge fees and the like.

Beyond the statutory language, the State DNA identification index was not created to punish defendants. Similar to the order of protection evaluated in *Nieves*, the database is a measure to assist law enforcement. The inclusion of one's DNA profile within the State Index is no more a punishment than the retention of fingerprints taken when a person is arrested, undergoes a background check, or voluntarily provides as a student pursuant to NYC Administrative Code § 14-118.1. The fingerprints of every person who is processed after an arrest are obtained, and if convicted those fingerprints are retained and utilized to make subsequent arrests if those fingerprints are found in connection to a separate crime. The fact that the fingerprints lead to a person being held responsible for their crimes against society does not make their provision a punishment. The same holds for the provision of a DNA sample. As such, this Court should follow the guidance of the Second Department and hold that the provision of a DNA sample is not a component of sentencing and as such does require an allocution for the defendant's plea to be knowing, voluntary, and intelligent.

**c. Provision of a DNA Sample is Not a Direct Consequence of Conviction.**

Even if it was determined by this Court that the provision of a DNA sample does fall within the direct and collateral consequence framework, an assertion directly rejected by the Appellate Division, Second Department, and which the People respectfully submit this Court should also reject, the failure of the Court to inform Defendant of the DNA sample requirement does not cause his plea to be involuntary. While a court must

advise the defendant of the direct consequences of a plea, a court is generally under no obligation to apprise the defendant of collateral consequences of a plea. *Peque*, 22 N.Y.3d at 184. Direct consequences have a definite, immediate, and largely automatic effect on the defendant's punishment. *People v. Ford*, 86 N.Y.2d 397, 403 (1995). Alternatively, collateral consequences are those which are peculiar to the individual's personal circumstances and not within the control of the court system. *Id.* Examples of direct consequences include the forfeiture of trial rights, imprisonment, and post-release supervision. *Peque* at 184. By contrast, collateral consequences include the loss of the right to vote or travel abroad, loss of civil service employment, loss of a driver's license, loss of the right to possess firearms, imprisonment upon revocation of post-release supervision, sex offender registration under the Sex Offender Registration Act, and civil confinement. A noteworthy component of EL § 995-C(3)(b) is detailed guidance as to the collection of DNA samples depending on various circumstances, of which the court has no discretion.

A notable exception among collateral consequences which requires a specific allocution by a trial judge is that the defendant must be informed that if they are not a citizen of the United States of America, they may be deported as a result of a guilty plea. *Id.* at 193. Deportation is an automatic consequence, and the deportation process deprives the defendant of an exceptional degree of physical liberty by first detaining and then forcibly removing the defendant from the country. *Id.* at 192. The creation of this



exception did not alter any of the burdensome collateral consequences previously held to not require an allocution, as the Court of Appeals noted that it arose from the “truly unique nature of deportation”, stating “there is nothing else quite like it.” *Id.* at 196.

In dicta, the Court of Appeals has stated that when a consequence is deemed collateral, if the defendant can show that he plead guilty in ignorance of a consequence and can convincingly show that the newly discovered information would have caused a change of heart, the motion cannot simply be defeated by labelling the consequence “collateral”. *People v. Gravino*, 14 N.Y.3d 546, 559 (2010). In *Gravino*, it was shown that the defendant did not know that SORA registration was a component, and a motion to withdraw the plea was made as this led the defendant to change his mind about pleading guilty. Even here, however, the court held that the defendant’s lack of knowledge prior to sentencing of the SORA registration did not detract from the plea’s voluntariness because SORA registration was nevertheless a collateral consequence.

Here, the requirement to provide a DNA sample to the government is a consequence that is the result of a guilty plea to any misdemeanor or felony. However, the uniformity of a consequence does not automatically deem a consequence direct, as seen by the decisions of the Court of Appeals. For example, the loss of the right to vote applies to anyone convicted of a felony. And while Defendant notes that there is a possibility of being held in custody until one submits a DNA sample, such custody is incongruous with that of a determinate sentence of imprisonment or deportation. Rather, it is more akin to failure to register according to the requirements of the SORA,

a violation of which may be prosecuted as a crime. The consequence of the plea is the requirement to provide a sample, which does not include incarceration, unless Defendant obstructs government administration by refusing to provide the sample. This is a critical distinction that Defendant glosses over. Further, exposure to future criminal prosecutions is not a direct consequence, and again finds the most similarity to SORA registrations. Defendant states that these two consequences are “by definition” direct consequences; however, New York jurisprudence states otherwise. Further, the court system is not in control of the processes of the procurement of the DNA sample, what is done with the sample, or any component of the State DNA Index.

As a collateral consequence, the requirement to submit a DNA sample deserves no exception to the rule. *Gravino*, which stands for the proposition that lack of knowledge of SORA registration does not impede voluntariness, includes dicta in relation to rare circumstances. However, *Peque*, decided 3 years later, makes no mention of this and explicitly opines on the unusualness of deportation as a collateral consequence necessitating allocution. Further, the desire to not provide a DNA sample is not a noble desire nor does it invoke a liberty interest. Rather, it is a desire born from a motivation to evade justice from future and prior acts against society. As such, it deserves no special consideration from the court, relying upon a scant paragraph of dicta, and the lack of an allocution does not impact the voluntariness of Defendant’s plea.

## II. Dismissal of the Indictment is Not in the Interest of Justice

**Applicant Details**

First Name **Cameron**  
 Last Name **Misner**  
 Citizenship Status **U. S. Citizen**  
 Email Address [ctm76@cornell.edu](mailto:ctm76@cornell.edu)  
 Address

**Address****Street****110 Osmun Pl. Apt 2E****City****Ithaca****State/Territory****New York****Zip****14850**

Contact Phone Number **317-946-5954**

**Applicant Education**

BA/BS From **University of Indianapolis**  
 Date of BA/BS **May 2021**  
 JD/LLB From **Cornell Law School**  
<http://www.lawschool.cornell.edu>  
 Date of JD/LLB **May 15, 2024**  
 Class Rank **5%**  
 Law Review/Journal **Yes**  
 Journal(s) **Cornell Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s)

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships **No**  
 Post-graduate Judicial Law Clerk **No**

**Specialized Work Experience**

## Recommenders

Dorf, Michael  
michaeldorf@cornell.edu  
(607) 255-3890

Gardner, Maggie  
mgardner@cornell.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

110 Osmun Pl. Apt 2E  
Ithaca, NY 14850  
(317) 946-5954

June 12, 2023

The Honorable Juan R. Sanchez  
U.S. District Court for the Eastern District of Pennsylvania  
James A. Byrne United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez,

I am writing to apply for a clerkship in your chambers for the 2024-2025 term. I am a rising third-year student ranked first in my class at Cornell Law School where I serve as Cornell University's Lead Respondents' Code Counselor, an Articles Editor for the *Cornell Law Review*, and a Bench Editor for the Moot Court Board. I spent last summer working on civil rights litigation at a plaintiff-side firm founded by a Cornell Law alumnus, and I am working this summer for leading labor boutique O'Donoghue and O'Donoghue in their Washington, D.C. office.

Clerking has been a goal of mine from the time I entered law school. As someone attracted to public-interest work, I am very excited that possibly my first legal job could be serving the public by helping a judge reach just and well-reasoned decisions. And I would be particularly excited to do that job for a judge who emphasizes commitment to public service in the clerkship hiring process.

I have included my resume, my law school transcript, a writing sample, and letters of recommendation from Professors Michael Dorf and Maggie Gardner. Should you require any additional information, please do not hesitate to let me know. Thank you for considering my application.

Sincerely,

Cameron Misner

## Cameron Misner

Ctm76@cornell.edu | 317-946-5954 | 110 Osmun Pl. Apt 2E, Ithaca, NY 14850

### EDUCATION

<b>Cornell Law School</b>	Ithaca, NY
Candidate for Juris Doctor	May 2024
GPA: 4.088 (Ranked #1).	
Honors: Kasowitz Prize for Excellence in Legal Writing and Oral Advocacy; Myron Taylor Scholar; CALI Awards (8): Torts, Lawyering I, Lawyering II, Civil Procedure II, Criminal Law, Public International Law, Administrative Law, Antitrust Law.	
Activities: <i>Cornell Law Review</i> , Articles Editor; Lawyering Program Honors Fellow; Academic Peer Advisor; First Amendment Clinic; Cornell Law Basketball Team.	
Moot Court: Faust F. Rossi Competition 2023, oral-argument Finalist and best-brief Finalist; Cuccia Cup 2022, oral-argument Quarterfinalist; Moot Court Board, Bench Editor.	
<b>University of Indianapolis</b>	Indianapolis, IN
Bachelor of Arts in Political Science, <i>summa cum laude</i>	May 2021
GPA: 4.0	
Honors: Dean's List (every semester); GLVC Brother James Gaffney Award; Roland T. Nelson Scholarship; Dwight L. Smith Award for Excellence in Research and Writing; Full Tuition Athletic Scholarship.	
Thesis: <i>The Constitution is What the Judges Say It Is: How Politics Influence Supreme Court Justices.</i>	
Activities: Quarterback on the football team; Student Athlete Advisory Council.	

### EXPERIENCE

<b>O'Donoghue and O'Donoghue, LLP</b>	Washington, DC
<i>Summer Associate</i>	May 2023 – August 2023
Research legislative history to bolster arguments in a rulemaking petition. Research and draft memo predicting an appropriate bargaining unit in a petition for union representation.	
<b>Cornell Law School</b>	Ithaca, NY
<i>Lead Respondents' Code Counselor</i>	June 2023 – May 2024
<i>Respondents' Code Counselor</i>	August 2022 – May 2023
Represent Cornell students and faculty accused of violating University rules. Advise clients of their rights and investigate facts. Draft opening and closing statements and examine and cross-examine witnesses at hearings. Manage caseloads and office logistics. Collaborate and liaise with University leadership.	
<b>The Lacy Employment Law Firm</b>	Philadelphia, PA (remote)
<i>Law Clerk</i>	May 2022 – August 2022
Drafted a brief supporting a motion for reconsideration of an order excluding expert testimony. Co-drafted a brief opposing a motion to dismiss Title VII, Section 1981, and breach-of-contract claims. Researched and crafted new arguments for liability under Section 1981 and Title VII.	
<b>Highland Golf and Country Club</b>	Indianapolis, IN
<i>Caddie and Outside-Services Specialist</i>	May 2021 – July 2021
<b>FedEx Ground</b>	Indianapolis, IN
<i>Package Handler</i>	May 2020 – August 2020

### PUBLICATIONS

Note, *Dependent Contractors?: The Case for Giving Non-competes a Central Role in Worker-Classification Tests Under Federal Law*, 109 CORNELL L. REV. (forthcoming March 2024).

### INTERESTS

Golf, intramural sports, fitness, country music.

Cornell Law School - Grade Report - 06/02/2023

**Cameron Misner T Misner**

JD, Class of 2024

Course	Title	Instructor(s)	Credits	Grade			
Fall 2021 (8/24/2021 - 12/3/2021)							
LAW 5001.1	Civil Procedure	Clermont	3.0	A+			
LAW 5021.1	Constitutional Law	Dorf	4.0	A			
LAW 5041.2	Contracts	Kadens	4.0	A			
LAW 5081.5	Lawyering	Freed	2.0	A	CALI		
LAW 5151.2	Torts	Hans	3.0	A+	CALI		
	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	16.0	16.0	4.1237
Cumulative	16.0	16.0	16.0	16.0	16.0	16.0	4.1237

^ Dean's List

**Spring 2022 (1/18/2022 - 5/2/2022)**

LAW 5001.2	Civil Procedure	Gardner	3.0	A	CALI		
LAW 5061.1	Criminal Law	Arnaud	3.0	A+	CALI		
LAW 5081.5	Lawyering	Freed	2.0	A	CALI		
LAW 5121.1	Property	Dinner	4.0	A-			
LAW 6791.1	Public International Law	Rostow	3.0	A+	CALI		
	<b>Total Attempted</b>	<b>Total Earned</b>	<b>Law Attempted</b>	<b>Law Earned</b>	<b>MPR Attempted</b>	<b>MPR Earned</b>	<b>MPR</b>
Term	15.0	15.0	15.0	15.0	15.0	15.0	4.0440
Cumulative	31.0	31.0	31.0	31.0	31.0	31.0	4.0851

^ Dean's List

**Fall 2022 (8/22/2022 - 12/16/2022)**

LAW 6011.1	Administrative Law	Rachlinski	3.0	A+	CALI		
LAW 6101.1	Antitrust Law	Hay	3.0	A+	CALI		
LAW 6881.651	Supervised Writing/Teaching Honors Fellow Program	Freed	2.0	SX			
LAW 6898.1	The Art of Negotiation in Business & Sports	Huyghue	2.0	S			
LAW 7867.301	First Amendment Law Clinic 1	Hans/Jackson/Murray/Neitzey	4.0	A			
	<b>Total Attempted</b>	<b>Total Earned</b>	<b>Law Attempted</b>	<b>Law Earned</b>	<b>MPR Attempted</b>	<b>MPR Earned</b>	<b>MPR</b>
Term	14.0	14.0	14.0	14.0	10.0	10.0	4.1980
Cumulative	45.0	45.0	45.0	45.0	41.0	41.0	4.1126

^ Dean's List

**Spring 2023 (1/23/2023 - 5/16/2023)**

LAW 6401.1	Evidence	K. Weyble	4.0	A			
LAW 6431.1	Federal Courts	Gardner	4.0	A			
LAW 6881.655	Supervised Writing/Teaching Honors Fellow Program	Freed	2.0	SX			
LAW 7868.301	First Amendment Law Clinic 2	Hans/Jackson/Murray/Neitzey	3.0	A			
	<b>Total Attempted</b>	<b>Total Earned</b>	<b>Law Attempted</b>	<b>Law Earned</b>	<b>MPR Attempted</b>	<b>MPR Earned</b>	<b>MPR</b>
Term	13.0	13.0	13.0	13.0	11.0	11.0	4.0000
Cumulative	58.0	58.0	58.0	58.0	52.0	52.0	4.0888

^ Dean's List

Total Hours Earned: 58

June 2023



## Cornell Law School

Lawyers in the Best Sense

### Cornell Law School Grading Policy for JD Students

Faculty grading policy calls upon each faculty member to grade a course, including problem courses and seminars, so that the mean grade for JD students in the course approximates 3.35 (the acceptable range between 3.2 and 3.5). This policy is subject only to very limited exceptions.

Due to the public health emergency, spring 2020 instruction was conducted exclusively online after mid-March and law school courses were graded on a mandatory Satisfactory/Unsatisfactory basis. No passing grade received in any spring 2020 course was included in calculating the cumulative merit point ratio.

### Class Rank

As a matter of faculty policy, we do not release the academic rankings of our students. Interested individuals, including employers, have access to the top 10% approximate cumulative grade point cut off or the most recent semester of completion. In addition, at the completion of the students second semester and every semester thereafter the top 5% approximate cumulative grade point average is also available. In general students are not ranked however the top ten students in each class are ranked and are notified of their rank.

#### Class of 2023 [six semesters]:

5% - 3.9204; 10% - 3.8364

#### Class of 2024 [four semesters]:

5% - 3.9048; 10% - 3.7897

#### Class of 2025 [two semesters]:

5% - 3.9475; 10% - 3.8350

### Dean's List

Each semester all students whose **semester** grade point average places them in the top 30% of their class are awarded Dean's List status. Students are notified of this honor by a letter from the Dean and a notation on their official and unofficial transcripts.

### Myron Taylor Scholar

This honor recognizes students whose cumulative MPR places them in the top 30 percent of their class at the completion of their second year of law school. Students are notified of this honor by a letter from the Dean of Students.

### Academic Honors at Graduation

The faculty awards academic honors at graduation as follows: The faculty awards the J.D. degree summa cum laude by special vote in cases of exceptional performance. The school awards the J.D. degree magna cum laude to students who rank in the top 10% of the graduating class. Students who rank in the top 30% of the class receive the J.D. degree cum laude unless they are receiving another honors degree. For the graduating Class of 2023, the GPA cut off for magna cum laude was 3.8364 and for cum laude was 3.6627. Recipients are notified by a letter from the Dean and a notation on their official and unofficial transcripts.

**The Order of the Coif** is granted to those who rank in the top 10% of the graduating class. To be eligible for consideration for the Order of the Coif, a graduate must be in the top 10% with 75% of credits taken for a letter grade.

Prior to fall 2018, faculty who announced to their classes that they might exceed the cap were free to do so. If the 3.5 cap was exceeded in any class pursuant to such announcement, the transcript of every student in the class will carry an asterisk (\*) next to the grade for that class, and for various internal purposes such as the awarding of academic honors at graduation, the numerical impact of such grades will be adjusted to be the same as it would have been if the course had been graded to achieve a 3.35 mean.

For detailed information about exceptions and other information such as grading policy for exchange students please go to the Exam Information & Grading Policies link at <http://www.lawschool.cornell.edu/registrar>.





June 11, 2023

The Honorable Juan Sanchez  
James A. Byrne United States Courthouse  
601 Market Street, Room 14613  
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing in extremely strong support of Cameron Misner for a position as a law clerk in your chambers following his graduation from Cornell Law School next year. Cam is currently first in his class—hardly surprising to me, given how he excelled as a first-year student in my constitutional law course.

As you will see from the balance of Cam's application, he is a stellar student. In addition to earning top grades in his courses, Cam serves as an Articles Editor of the Cornell Law Review, an Honors Fellow for first year writing (which requires him to provide extensive feedback), and a Respondent's Code Counselor—the rough equivalent of a defense attorney for students (mostly undergraduates) accused of violating Cornell's disciplinary code. Each of these positions demands considerable time commitments and carries substantial responsibility. Cam was chosen for each because he was deemed highly trustworthy.

Cam stood out in my constitutional law class as extremely quick to grasp the law's logic and unsatisfied with superficial answers. I recall one time he visited me during office hours to express frustration with the lack of a consistent explanation in the Supreme Court's separation-of-powers cases for why some rulings accepted functional justifications for novel institutional arrangements (like the independent counsel), while other decisions insisted on formal rules (as in the invalidation of the legislative veto and the line-item veto). We discussed at length the leading (only partly successful) attempt in the literature to reconcile the disparate results by asking, as a threshold inquiry, whether a particular arrangement aggrandizes the branch responsible for it. Cam rightly objected that, depending on the baseline, virtually any arrangement will increase some branch's power at the expense of one or both of the others. I was floored by the sophistication of Cam's analysis and how quickly he was able to propose counter-arguments to his own arguments.

Cam wrote an outstanding exam for my class—as he apparently did for all of his classes. He writes expertly, comfortably using the relevant legal categories to organize his answers without detracting from the naturalness of his prose. That same quality comes through in the writing samples he submitted. Cam is of course a good legal writer, but mostly he is simply an excellent writer, full stop.

Cam will hold up well under pressure. As a former college quarterback who didn't panic under a pass rush, he can surely handle a deadline. He has a winning personality and a calm, unflappable style. I recommend him enthusiastically.

Sincerely yours,

Michael C. Dorf

*Robert S. Stevens Professor of Law*

Michael Dorf - [michaeldorf@cornell.edu](mailto:michaeldorf@cornell.edu) - (607) 255-3890

June 11, 2023

The Honorable Juan Sanchez  
James A. Byrne United States Courthouse  
601 Market Street, Room 14613  
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to enthusiastically and whole-heartedly recommend Cameron Misner to you as a law clerk for your chambers. He is extraordinary. I urge you to read this letter in its entirety, but the bottom line is that Cam is not only brilliant, with a top-notch analytical mind, but also a true gem of a person.

I first met Cam as a first-year student in my spring civil procedure class. He was not a “gunner”; he did not assert himself aggressively into every debate. Rather, he was a “pearl dropper”: a calm presence who can be counted on to say precisely the most insightful thing at precisely the right time. For example, I spend just two days on tribal jurisdiction, mostly to alert students to the existence of tribal governments. After other students had struggled to fit *Strate v. A-1 Contractors* into the two-exception framework of *Montana v. United States*, Cam piped up with a theoretically nuanced critique of Montana’s underlying rationale, suggesting a different workaround that demonstrated a synthesized understanding of multiple challenging cases. Even when not volunteering, his cold calls were impeccable, his questions incisive, and his attitude always bright, humble, and engaging. His exam was almost perfect, with clear organization and polished writing (despite the time pressure) and a deep understanding of even the trickiest issues (like non-mutual issue preclusion and supplemental jurisdiction). His exam tied one other student’s as the best exam out of their class of more than 70 students.

At Cornell, we recognize such achievement with “CALI” awards, which we are only allowed to give to one or two students per class. My jaw hit the floor when I saw Cam’s full transcript. His lowest grade is an A. In the majority of his graded courses, he is at the very top of the class as indicated either by A-pluses—which are rare at Cornell—or CALI awards. Of particular note, he earned a CALI in Lawyering (our primary research and writing class) both semesters of his 1L year and is now an Honors Fellow (a student TA) for the Lawyering program. Being selected as an Honors Fellow connotes not only top-notch writing ability, but also top-notch people skills. What makes Cam’s transcript even more impressive is that he is not gaming the system by seeking out ungraded or uncurved courses to protect his impressive GPA (as some of our students do). In his 2L fall, Cam took two major black-letter law courses (Antitrust and Administrative Law) from two of our most demanding professors (Jeff Rachlinski and George Hay) and earned both A-pluses and CALI awards in both classes.

This is a truly extraordinary transcript. But I shouldn’t have been surprised. Cam is currently in my Federal Courts class (as a 2L), and based on his class participation and questions, it is clear that he is understanding the material at a deeper conceptual level and with greater nuance than many of his colleagues. That observation is not meant to disparage my other students, who are among my very best and most favorite students; it is instead a superlative compliment of Cam’s analytical and synthetic ability.

But again, I cannot stress enough that while Cam “gets it” more easily and more thoroughly than just about any other student I have taught at Cornell, he never makes himself the center of attention in the classroom. He is a dream student in that sense, and I suspect that will translate into him being a dream law clerk as well. He will do the work easily and expertly, but he will also be a pillar of support for other members of your chambers. He is the sort of person who could softly point out oversights or errors in another’s work, raise difficult questions without invoking defensiveness, or open up a new line of inquiry with a casual observation.

Finally, I have the sense that Cam is well-rounded and down-to-earth, despite his stellar academic achievements and extensive extracurricular activities. He graduated summa cum laude with a perfect GPA from the University of Indianapolis even while playing quarterback on the football team (he attended college on a full athletic scholarship). Similarly here at Cornell, he has built his impressive transcript even while carrying heavy extracurricular commitments with the law review and moot court competitions (he was a finalist in our recent Rossi moot court competition and a quarter-finalist in last fall’s Cuccia Cup). Meanwhile, Cam has maintained a commitment to a public service law career, spending his 1L summer at a plaintiff-side civil rights firm and his upcoming summer working in labor law, on top of volunteer and clinical work here. He is, in short, a good egg.

Cam represents the best Cornell has to offer, and he will be a superlative clerk and a joy to mentor. I would be delighted to speak further about Cam if I can be of any additional assistance. You can always reach me by email at [mgardner@cornell.edu](mailto:mgardner@cornell.edu) or on my mobile at (202) 413-0716.

Sincerely,

Maggie Gardner  
Professor of Law

Maggie Gardner - [mgardner@cornell.edu](mailto:mgardner@cornell.edu)

**Cameron Misner** | ctm76@cornell.edu

Writing Sample

The following writing sample is the two sections of a brief in opposition to a Rule 12(b)(6) motion to dismiss that I wrote while working at The Lacy Employment Law Firm. The firm has approved my using this document as a writing sample. In Section V, I argue that our clients stated a valid claim under Title VII because our clients were employees, not independent contractors. Then, in Section VI I argue that our clients stated a valid claim for breach of contract, focusing on Pennsylvania's implied duty of good faith and fair dealing. I have omitted each section of the brief that I did not write and have included only my original, unedited work. On December 28, 2022, the court denied the motion to dismiss and held that our clients stated cognizable claims. *Clemente v. Allstate Ins. Co.*, No. 2:22-CV-00056-CCW, 2022 WL 17976324 (W.D. Pa. Dec. 28, 2022). Parts III.A and III.C.1 of the opinion deal with the issues I drafted.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERTO CLEMENTE JR.;  
KIMBERLY DSCHUHAN; RYAN NORTON;  
KAILEE CLEMENTE; AND  
THE ROBERTO CLEMENTE JR. FAMILY  
AGENCY LLC

CIVIL DIVISION

Plaintiffs,

Civil Action No.

ALLSTATE INSURANCE COMPANY;  
TOMAINO INSURANCE AGENCY;  
JOHN TOMAINO; AND JUSTIN YOUNG

Defendants.

**JURY TRIAL DEMANDED**

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**RESPONSE IN OPPOSITION TO DEFENDANT ALLSTATE'S MOTION TO DISMISS**

**LEGAL STANDARD**

[OMITTED]

**ARGUMENT**

- I. [OMITTED]
- II. [OMITTED]
- III. [OMITTED]
- IV. [OMITTED]
- V. **THE COURT SHOULD DENY ALLSTATE’S MOTION TO DISMISS PLAINTIFFS’ TITLE VII CLAIMS BECAUSE ALLSTATE *EMPLOYED* EACH INDIVIDUAL PLAINTIFF AT ALL RELEVANT TIMES.**

Allstate attempts to shirk its status as plaintiffs’ employer with short shrift. In doing so, Allstate argues that its business model – one in which it forces every one of its agents into a noncompete agreement – is shielded against liability under federal employment laws. Taking Allstate’s argument to its conclusion, a hypothetical woman who is harassed by one of Allstate’s Field Sales Leaders would have no recourse under employment laws. She would have to choose to either endure the continued harassment or resign from her position. And if she chose to resign, she would remain unable to work in the insurance industry for an entire year based on Allstate’s non-compete agreement. (*See* Ex. 4, ¶ 7.) Allstate cannot maneuver so easily around being an employer while simultaneously exercising such significant control over its agents.

- A. *The proper test is Allstate’s right to control Plaintiffs’ work, not the mere words in the contract.*

Allstate’s contentions notwithstanding, courts in Title VII cases determine whether a hired party is an employee not by the mere label used in the contract, but by looking to common-law agency criteria, which help measure “the hiring party’s right to control the manner and means by which the hired party accomplishes the product.” *Faush v. Tuesday Morning, Inc.*, 808 F.3d 208, 214 (3d Cir. 2015) (quoting *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992)); see also *Thange v. Oxford Glob. Res., LLC*, Civil Action No. 19-5979, 2022 U.S. Dist. LEXIS 101301,

at \*12 (D.N.J. June 7, 2022) (holding that a reasonable jury could find an employment relationship between plaintiff and defendant despite specific contract language stating that plaintiff was an independent contractor and not an employee). The so-called *Darden* inquiry includes a list of twelve factors, and the Third Circuit directs its focus to three of them: whether the purported employer paid the purported employees, hired and fired them, and exercised control over their daily activities. *Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 119 (3d Cir. 2013). Ultimately, however, the *Darden* factors are non-exhaustive and not meant to be applied in a rigid or formulaic manner because they are merely analytical tools; the right to control is the determinative metric. *Faush*, 808 F.3d at 214.

Here, Plaintiffs have pleaded sufficient allegations of employer-level control under the Third Circuit's three primary *Darden* factors, and under the remaining *Darden* factors. Additionally, Allstate's requirement that Plaintiffs sign non-compete agreements should raise a strong presumption that Plaintiffs were employees.

*B. Plaintiffs have pleaded sufficient facts such that the Darden test would plausibly yield a finding of an employment relationship.*

The Third Circuit has found hired parties to be employees in circumstances analogous to the present case. In *Faush*, for example, the Third Circuit held that a rational jury could have found that the defendant, a retail store who hired plaintiffs from a staffing agency, was the plaintiffs' employer because the defendant-store had day-to-day control over the plaintiffs' work activities. *Id.* at 216. The court recognized that even though the defendant only paid for the plaintiffs' work indirectly and could not terminate the plaintiffs' employment at the staffing agency, the defendant nonetheless had the right to dictate the plaintiffs' activities and supervise their work, furnished the plaintiffs with training and necessary tools, and had the right to demand replacement workers from the staffing agency, all of which evidenced a substantial degree of control. *Id.* at 214-17. By

contrast, the pre-*Faush* and pre-*Covington* case upon which Allstate relies recognized that the only control retained by the defendant-insurance company was authority to appoint subordinate officers, govern the insurance policies the plaintiff sold, and require pre-approval of marketing materials. *Kahn v. Am. Heritage Life Ins. Co.*, 324 F. Supp. 2d 652, 656-57 (E.D. Pa. 2004). The *Kahn* court noted that the plaintiff retained discretion over her hours and location, and the court made no mention of any training requirements or provision of instrumentalities by defendant. *Id.*

Here, Plaintiffs have pleaded sufficient facts such that a finding of an employment relationship is plausible. Although Plaintiffs' compensation was commission-based and, like in *Faush*, only remitted from Allstate to the individual Plaintiffs indirectly, the compensation factor is counterbalanced by the fact that Allstate had the right to terminate the employment of each Plaintiff, which Allstate ultimately exercised. (SAC Ex. 3 § XV; ¶¶ 54, 114, 118, 238.) The day-to-day control factor weighs strongly in favor of an employment relationship because Allstate provided nearly all of the instrumentalities (e.g. SAC ¶¶ 193, 196, 206, 207, 209, 216, 232), had strict training requirements for all agents (*Id.* ¶¶ 195, 197), dictated office hours and locations (*Id.* ¶¶ 200-01, 217), could monitor and control Plaintiffs' computers (*Id.* ¶¶ 209, 213), and required Plaintiffs to do additional projects outside of selling insurance (*Id.* ¶¶ 233-34).

In addition to the Third Circuit's primary factors, several other *Darden* factors weigh in favor of an employment relationship. For example, the Contract did not set forth a definite duration of the relationship, but rather allowed Allstate or the Agency to terminate it whenever, which is consistent with an at-will employment relationship. (*Id.* ¶ 238.) Additionally, Allstate hired Plaintiffs to sell insurance, which is exactly the business that Allstate is regularly engaged in. (*Id.* ¶ 228.) Moreover, Allstate offered benefits to the individual Plaintiffs. (*Id.* ¶ 237.) Admittedly,

Allstate was not in charge of withholding the individual Plaintiffs' taxes, but that lone factor cannot transform Plaintiffs into independent contractors.

*C. Allstate's requirement that Plaintiffs sign non-compete agreements further evidences Allstate's control over Plaintiffs' work because the agreements engender economic dependence on Allstate.*

One consideration not specifically delimited in the non-exhaustive *Darden* factors, but crucial to the right to control, is how dependent the hired party is on the hiring party for work. The Third Circuit has recognized as much in the FLSA context. *Donovan v. Dialamerica Mktg., Inc.*, 757 F.2d 1376, 1385 (3d Cir. 1985). Although the FLSA definition of "employee" is not guided by common-law agency criteria, *Rutherford Food Corporation v. McComb*, 331 U.S. 722, 726-27 (1947), the test emphasizes the right to control and considers many of the *Darden* factors. *See Donovan*, 757 F.2d at 1385. Hiring parties can engender dependence through non-compete agreements, which limit a hired party's ability to independently contract with other hiring parties. *See, e.g., Figueroa v. Precision Surgical, Inc.*, 423 F. App'x 205, 208 (3d Cir. 2011); *Swinney v. AMcomm Telecomms., Inc.*, 30 F. Supp. 3d 629, 634 (E.D. Mich. 2014). Given the following logical and prudential considerations, state case law, and pre-*Darden* agency law, the dependence engendered by non-compete agreements, like the ones Allstate requires (SAC ¶ 218), should raise a strong presumption that a hired party is an employee under the *Darden* analysis.

Logically, as one party's dependence on another increases, so too does the other's control of that party. To illustrate, it is useful to examine how economic dependence implicates some of the delimited *Darden* factors; for example, a party dependent on another for work will likely have a longer relationship with the hiring party than otherwise; a dependent party will likely complete additional assignments assigned to them by the hiring party; and a dependent party will likely submit to the hiring party's direction as to when and how long to work. Additionally, failing to



apply a presumption of employment could allow hiring parties to circumvent employment laws by structuring agreements such that the delimited *Darden* factors counsel finding an independent-contractor relationship, while using non-compete agreements to retain significant control.

Case law in the state courts lends further support to the proposition that economic dependence created by non-compete agreements is a strong indicator of an employer-employee relationship. In Pennsylvania, requiring a hired party to sign a non-compete agreement is strong evidence of control by the hiring party, which (like under *Darden*) is the ultimate metric for determining employment relationships for unemployment insurance purposes. *Lowman v. Unemployment Comp. Bd. of Review*, 235 A.3d 278, 300-01 (Pa. 2020). Many other state courts have made similar pronouncements. *See, e.g., Idaho ex rel. Indus. Comm'n v. Skydown Skydiving, Ltd. Liab. Co.*, 166 Idaho 564, 462 P.3d 92, 101 (2020) (non-compete agreement “is usually more indicative of the type of control an employer typically exercises over an employee”); *State ex rel. Ugicom Enters. v. Morrison*, 2021-Ohio-1269, 2021 Ohio App. LEXIS 1247, at \*11 (Ct. App.) (“[m]ost notably, the individuals were bound by a non-compete agreement... This level of exclusivity and ongoing association is indicative of an employer-employee relationship.”) *Jensen Tech Servs. v. Lab. Comm'n*, 2022, 506 P.3d 616, 622 (Ut. Ct. App. 2018) (recognizing that noncompete clauses are indicative of an employer-employee relationship); *Handyman House Techs, LLC v. Miss. Dep't of Emp't Sec.*, 337 So. 3d 681 (Miss. App. 2022) (same); *Timster's World Found. v. Div. of Emp't Sec.*, 495 S.W.3d 211, 222 (Mo. Ct. App. 2016) (same).

Another source of support for using economic dependence as a presumption-creating factor can be found in the *Darden* opinion itself. Indeed, a ruling by the IRS, which the Supreme Court cited along with the Restatement (2nd) of Agency as an example of traditional agency-law criteria, lists as a factor whether the hiring party requires full-time work from the hired party, explaining

that “an independent contractor... is free to work when and for whom he or she chooses.” Rev. Rul. 87-41. Thus, pre-*Darden* agency law, from which the *Darden* factors themselves derive, recognized that dependence on a single party for work is a strong indication that the dependent party is an employee, not an independent contractor.

Accordingly, Plaintiffs have not only pleaded facts indicative of an employment relationship under the Third Circuit’s primary factors and the other *Darden* factors, but they have also pleaded their non-compete agreements, which ought to create a strong presumption that Allstate was Plaintiffs’ employer.

#### **VI. THIS COURT SHOULD DENY ALLSTATE’S MOTION TO DISMISS COUNT III BECAUSE PLAINTIFFS PROPERLY PLEAD BREACH OF CONTRACT.**

A plaintiff states a claim for breach of contract under Pennsylvania law by alleging (1) the existence of a contract, including its essential terms; (2) breach of a duty imposed by the contract; and (3) resultant damages. *Ware v. Rodale Press, Inc.*, 322 F.3d 218, 225 (3d Cir. 2003) (applying Pennsylvania law). Here, Allstate has not disputed the existence of a valid contract, nor that Plaintiffs suffered damages. Moreover, Plaintiffs have sufficiently pleaded Allstate’s breach of specific contractual duties, including Allstate’s obligations to provide Plaintiffs with signage and supplies; to allow Plaintiffs until December 1, 2020 to sell their book of business; and to provide 90 days’ notice before terminating the Agreement.

##### *A. Allstate had an obligation to perform its contractual duties in good faith.*

A plaintiff properly pleads breach of a contractual duty when he identifies a specific obligation imposed by the contract and alleges facts establishing a failure to perform that obligation. *McPartland v. Chase Manhattan Bank USA, N.A.*, No. 1:22-CV-00284, 2022 U.S. Dist. LEXIS 99023, at \*5 (M.D. Pa. June 2, 2022) (citing *Hart v. Univ. of Scranton*, 838 F. Supp. 2d 324, 327-28 (M.D. Pa. 2011)). Under Pennsylvania law, contractual obligations include an implied

duty to perform those obligations according to the standards of good faith and fair dealing. *W. Run Student Hous. Assocs., LLC v. Huntington Nat'l Bank*, 712 F.3d 165, 170 (3d Cir. 2013). The duty of good faith ensures that contractual terms will be enforced according to the parties' reasonable expectations. *Id.*; see also *Haywood v. Univ. of Pittsburgh*, 976 F. Supp. 2d 606 (W.D. Pa. 2013) (noting that Pennsylvania courts follow Restatement (2nd) of Contracts § 205).

Deriving from the duty of good faith is an obligation that where a party is granted discretion under a contractual term, the party must exercise that discretion reasonably. *Presque Isle Colon & Rectal Surgery v. Highmark Health*, 391 F. Supp. 3d 485, 513 (W.D. Pa. 2019) (applying PA law). Thus, a plaintiff validly pleads breach of a contractual duty by alleging that a defendant performed its discretionary obligations discriminatorily. See *id.* at 512-13 (refusing to dismiss breach-of-contract claim where plaintiff alleged that defendant exercised its discretionary right to review and adjust reimbursement rates in bad faith by unilaterally and discriminatorily cutting rates.)

While Allstate asserts that “there can be no breach where a party is simply exercising its discretionary rights,” the cases it cites for that proposition not only present weak analogies to the present case, but also themselves note that that contractual discretion is not unlimited. *Brown v. Agway Energy Servs., LLC*, 328 F. Supp. 3d 464, 472 (W.D. Pa. 2018); *Corsale v. Sperian Energy Corp.* 374 F. Supp. 3d 445, 457 (W.D. Pa. 2019). Neither the *Brown* court, nor the *Corsale* court dismissed the breach-of-contract claims because the defendants-private utility companies had unlimited discretion to set rates, but rather because plaintiffs' allegations in each case included only that defendants were charging higher-than-market rates, while the contracts gave defendants pricing discretion based on both market and non-market factors. *Brown*, 328 F. Supp. at 475; *Corsale*, 374 F. Supp. 3d at 457. Plaintiffs in both cases therefore failed to plausibly allege that defendants were not exercising reasonable discretion regarding the entirety of the factors they were

permitted under their contracts to consider. *Brown*, 328 F. Supp. at 476; *Corsale*, 374 F. Supp. 3d at 457-58.

*B. Plaintiffs allege at least three specific breaches of Allstate's contractual obligations.*

First, unlike the *Brown* and *Corsale* plaintiffs, Plaintiffs here have specifically alleged that Allstate was not acting pursuant to the reasonable discretion it was permitted under the contract when it denied Plaintiffs signage and materials. Although Allstate mischaracterizes the Contract's terms as providing that Allstate "may" furnish the agency with various materials that Allstate deems advisable, (Defs. Br. 26.), the contract in fact provides that Allstate "**will** furnish Agency such signs, forms, manuals, records, and other supplies as the Company deems advisable," and "**will** offer... such additional materials and supplies as the Company feels may be helpful." (Ex. 6 to SAC § IV.) Thus, if Allstate determined that something was advisable or helpful, it was obligated to provide or at least offer to provide it. Although Allstate's discretion lies in the determination of whether providing signs and supplies is advisable or helpful, Plaintiff has pleaded that Allstate timely provided signage, supplies, and website listings to other agencies in Plaintiffs' area. (SAC ¶¶ 41, 43-44, 47, 45-55, 66, 68-71). The logical inference is either that Allstate determined that providing these amenities to agencies was advisable - making its failure to provide them to Plaintiffs a breach of explicit terms - or that Allstate determined such provisions were not advisable for discriminatory reasons, thus violating the covenant of good faith and fair dealing.

Setting forth a second breach by Allstate, Plaintiffs have alleged that Allstate breached its obligation to permit Plaintiffs to sell their book of business before December 1, 2020. To be sure, Allstate retained discretion over whether potential buyers met the eligibility requirements, (Ex. 4 to SAC), but implied in that discretionary right is an obligation to consider in good faith potential

buyers that Plaintiffs procured. Plaintiffs have alleged at least three ways in which Allstate acted inconsistently with that good-faith obligation:

First, Allstate failed to communicate with Plaintiffs during the period in which Plaintiffs were trying to sell the book. (SAC ¶¶ 159-160.) Plaintiffs' reasonable expectations were that while they searched for a suitable buyer, Allstate would at least keep an open line of communication. Instead, however, Allstate offered nothing but radio silence, which made selling the book more difficult. (*See id.*)

Second, Allstate refused to approve at least one buyer for pretextual reasons. (SAC ¶ 129.) Although Allstate retained the right to approve or disapprove buyers, Plaintiffs reasonably expected that Allstate would not use that right as a tool to deprive Plaintiffs of their own contractual privileges. Any other understanding of Plaintiffs' right to sell the Book upon termination of the Contract would render the right essentially meaningless because Allstate could block the exercise of that right for any reason or no reason at all. *See Kamco Indus. Sales, Inc. v. Lovejoy, Inc.*, 779 F. Supp. 2d 416, 429 (E.D. Pa. 2011) (holding that Plaintiff had a justifiable expectation that Defendant would not use its discretion to deprive Plaintiff of its rights under the contract because reading such a right into the Contract would render those rights meaningless).

Third, Allstate ultimately gave away much of the book's contents before the December 1 deadline. (SAC ¶¶ 161, 309.) On its own, this is an explicit breach of Allstate's obligation to allow Plaintiffs to transfer their "entire economic interest in the business... upon termination." (Ex. 3 to SAC § XVI.B.) Taken with the foregoing allegations, it is also further evidence of Allstate's bad-faith interference with Plaintiffs' efforts to sell the Book.

Additionally, Allstate's assertion that Plaintiffs never procured an eligible buyer, (Defs.' Br. 28.), does nothing to counter Plaintiffs' allegations that Allstate intentionally stymied

Plaintiffs' ability procure such a buyer. *See Apalucci v. Agora Syndicate*, 145 F.3d 630, 634 (3d Cir. 1998) (citing, *inter alia*, *Borough of Nanty-Glo v. American Sur. Co. of N.Y.*, 316 Pa. 408, 175 A. 536, 537 (Pa. 1934)) (stating that where a party obstructs the performance of a condition precedent, the party may not capitalize on that failure).

The third specific breach Plaintiffs have alleged is that Allstate terminated the Agreement without providing the required 90-days' notice. Plaintiffs have alleged that Allstate falsely targeted them for fraud and then terminated the Agency Agreement mere days after first notifying Plaintiffs of said fraud allegation. (SAC ¶¶ 113-17.) The Agency Agreement provides that the Agreement is terminable by either party with or without cause, but if terminated by Allstate without cause, only upon 90-days' written notice. (Ex. 3 § XVII(B).) Because Plaintiffs have alleged that Allstate manufactured the purported cause for termination, the Agency Agreement required Allstate to provide 90-days' notice before terminating. And because Allstate only provided a few days' worth of notice, Plaintiffs were denied almost three months of business. Moreover, even if this Court reads the contract to confer substantial discretion on Allstate to determine what constitutes cause and what does not, that discretion cannot include making up a pretextual reason, as honesty is the most basic requirement in the covenant of good faith and fair dealing. *See, e.g.*, Restat 2d of Contracts, § 205, cmts. a, d.

Accordingly, Plaintiffs have properly pleaded that Allstate breached at least three contractual obligations, and the Court should deny Allstate's motion to dismiss Count III.

**Applicant Details**

First Name **James**  
 Middle Initial **SP**  
 Last Name **Mizner**  
 Citizenship Status **U. S. Citizen**  
 Email Address [jsm198@case.edu](mailto:jsm198@case.edu)  
 Address

**Address**  
**Street**  
**7812 Hamot Rd**  
**City**  
**Erie**  
**State/Territory**  
**Pennsylvania**  
**Zip**  
**16509**

Contact Phone Number  
**8147460760**

**Applicant Education**

BA/BS From **John Carroll University**  
 Date of BA/BS **August 2022**  
 JD/LLB From **Case Western Reserve University School of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=33603&yr=2013](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=33603&yr=2013)  
 Date of JD/LLB **May 22, 2024**  
 Class Rank **33%**  
 Law Review/Journal **Yes**  
 Journal(s) **Health Matrix: Journal of Law-Medicine**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial	
Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

### **Recommenders**

John, Heasley  
john\_heasley@pawd.uscourts.gov  
Cupar, Jennifer  
jik@case.edu  
Kutik, David  
dakutik@gmail.com

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



J. Simon Peter Mizner

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20600 Fairmount Blvd. Shaker Heights, OH Apt. 14A | (814)746-0760 | jsm198@case.edu

June 6, 2023

The Honorable Juan R. Sanchez  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106  
Courtroom 14-B

Dear Judge Sanchez,

When I was a sophomore in college, a federal judge spoke in one of my classes and encouraged us all to spend a portion of our careers in government service. As a rising 3L at Case Western Reserve University School of Law, I seek to satisfy that request by serving as your Term Law Clerk for the term beginning in September of 2024. Since interning with a Magistrate Judge after my 1L year, I have been fascinated with how courts approach and adjudicate complex matters.

In my previous legal experiences, I have completed memoranda on amending and supplementing pleadings, the uses of artificial intelligence in the legal field, corporate governance, and perfecting a secured interest in digital currency. Drafting briefs, including one to exclude expert witness testimony, and drafting an opinion on a section 1983 Eighth Amendment claim, have been especially exciting responsibilities. Prior litigation experience includes cross examining witnesses, participating in the discovery process, and delivering a closing argument. I have observed many court proceedings, including jury and bench trials, status conferences, arraignments, and sentencings. Through my previous legal experiences, I have formed great friendships which I maintain today, and found great joy in my co-workers' company. In my free time, I enjoy spending time with friends, being outdoors, running, and weightlifting.

Attached are my resume, undergraduate and law school transcripts, a writing sample from a memorandum, and three letters of recommendation. I look forward to any opportunity to learn more about the position and greatly appreciate your time and consideration.

Respectfully,  
J. Simon Peter Mizner

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## James Simon Peter Mizner

---

20600 Fairmount Blvd. Shaker Heights, OH Apt. 14A | (814)746-0760 | jsm198@case.edu

### Education

<b>Case Western Reserve University School of Law</b>	Cleveland, Ohio
Juris Doctor	Anticipated May 2024
Health Matrix: Journal of Law-Medicine	July 2022 – Present
Class Rank Percentile: Top 33%	Spring 2023
CALI Excellence for the Future Award – Professional Responsibility	Fall 2022
Dean's List	Fall 2021, Spring 2023
<b>John Carroll University</b>	University Heights, Ohio
Bachelor of Arts in Economics, <i>cum laude</i>	August 2022
Minor in Political Science	
3+3 Law Program	

### Work Experience

<b>Milton A. Kramer First Amendment Law Clinic</b>	Cleveland, Ohio
Intern	<i>Forthcoming, Spring 2024</i>
<b>Erie Insurance</b>	Erie, Pennsylvania
Legal Intern	May 2023 – Present
<ul style="list-style-type: none"> <li>Analyze issues relating to corporate, employment, agency, and insurance law to understand how they impact the company</li> </ul>	
<b>U.S. Immigration &amp; Customs Enforcement, Office of the Principal Legal Advisor</b>	Cleveland, Ohio
Law Clerk	January 2023 – April 2023
<ul style="list-style-type: none"> <li>Second chaired removal hearings</li> </ul>	
<b>United States Attorney's Office for the Northern District of Ohio</b>	Cleveland, Ohio
Extern	August 2022 – November 2022
<ul style="list-style-type: none"> <li>Prepared attorneys for depositions and hearings on complex topics related to Civil Division litigation</li> <li>Met with clients and participated in case management conferences</li> </ul>	
<b>United States District Court for the Western District of Pennsylvania</b>	Erie, Pennsylvania
Extern	May 2022 – August 2022
<ul style="list-style-type: none"> <li>Briefed the Judge and his staff on matters before the Court in preparation of hearings</li> <li>Prepared court orders</li> </ul>	
<b>Mizner Law Firm</b>	Erie, Pennsylvania
Office Assistant	July 2014 – December 2021
<ul style="list-style-type: none"> <li>Performed office duties such as filing, researching, and writing</li> </ul>	
<b>Stephen P. Mizner Funeral Home and Cremation Services, Inc.</b>	Meadville, Pennsylvania
Funeral Assistant	July 2016 – August 2021
<ul style="list-style-type: none"> <li>Assisted in conducting business at the funeral home and took part in providing funeral home services</li> </ul>	

### Community Involvement

<b>Federalist Society</b>	Cleveland, Ohio
Treasurer	September 2021– Present
<ul style="list-style-type: none"> <li>Manage budget and organize guest speaker events which advocate for conservatism in the legal field</li> </ul>	
<b>Saint Jude the Apostle Parish</b>	Erie, Pennsylvania
Parishioner	January 2000 – Present
<b>Milton A. Kramer Law Clinic Center Wills Clinic</b>	Cleveland, Ohio
Volunteer	April 2022
<ul style="list-style-type: none"> <li>Guided clients through completing their wills</li> </ul>	
<b>Knights of Columbus</b>	University Heights, Ohio
Member	February 2020 – May 2021

Student ID: 3550842  
 SSN: XXX-XX-5506  
 Student Name: James Simon Peter Mizner

**Case Western Reserve University  
 Unofficial Transcript**

Page 1 of 1  
 06/16/2023

**Academic Program History**

Program: Juris Doctor  
 Active in Program

Course	Description	Attempted	Earned	Grade	Points
LAWS 2002	Constitutional Law	4.00	4.00	A-	14.664
LAWS 2001	Professional Responsibility	3.00	3.00	A	12.000
LAWS 5332	Sports Law	1.00	1.00	A-	3.666
LAWS 6103	Basic Mediation Training	1.00	1.00	CR	0.000
LAWS 5229	Information Privacy Law	1.00	1.00	B	3.000

**Beginning of Law Record**

Academic Standing: Good standing

Fall 2021					
Course	Description	Attempted	Earned	Grade	Points
LAWS 1103	Torts	4.00	4.00	A-	14.664
LAWS 1801	LLEAP1 - Wrting Advcy & Profism	3.00	3.00	B+	9.999
LAWS 1102	Criminal Law	3.00	3.00	A-	10.998
LAWS 1101	Contracts	4.00	4.00	A-	14.664

Term Honor: Dean's Honor List

		Attempted	Earned	Averaged	Points
Term GPA:	3.595	Term Totals	14.00	14.00	50.325
Cum GPA:	3.595	Cum Totals	14.00	14.00	50.325

Spr 2023					
Course	Description	Attempted	Earned	Grade	Points
LAWS 2803	LLEAP 3: Advanced Skills	3.00	3.00	A-	10.998
LAWS 6503	Health Matrix Seminar	2.00	2.00	B+	6.666
Req Designation:	JD Writing Requirement	Grade: S			
LAWS 7110	Legal Externship I	3.00	3.00	CR	0.000
LAWS 5424	Insurance	2.00	2.00	A	8.000
LAWS 5731	Federal Courts	3.00	3.00	B+	9.999
LAWS 5745	Foreign Affairs Law	2.00	2.00	A-	7.332

Spr 2022					
Course	Description	Attempted	Earned	Grade	Points
LAWS 1201	Civil Procedure	4.00	4.00	B+	13.332
LAWS 1203	Property	4.00	4.00	B-	10.664
LAWS 1802	LLEAP2 - Wrting Advcy & Profism	3.00	3.00	A	12.000
LAWS 1204	Legislation and Regulation	3.00	3.00	A-	10.998
LAWS 1905	Lgl Analysis & Prob Solving	1.00	1.00	CR	0.000

Academic Standing: Good standing

		Attempted	Earned	Averaged	Points
Term GPA:	3.357	Term Totals	15.00	15.00	46.994
Cum GPA:	3.476	Cum Totals	29.00	29.00	97.319

Class Rank: 48 of 163

Academic Standing: Good standing

Career Totals					
Cum GPA:	3.475	Cum Totals	63.00	63.00	187.641
Total Credits Earned:	63.00				

Non-Course Milestones  
 11/10/2022 - Substance Abuse Training Compl

**End of Law Record**

Fall 2022					
Course	Description	Attempted	Earned	Grade	Points
LAWS 4401	Business Associations	4.00	4.00	B-	10.664
LAWS 7045	Federal Judicial Externship	4.00	4.00	CR	0.000
LAWS 6503	Health Matrix Seminar	1.00	1.00	B+	3.333

The purpose of this document is grade reporting only. Since it may be incomplete, it should never be used as a substitute for an official transcript.

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
ERIE DIVISION  
17 SOUTH PARK ROW – ROOM A-280  
ERIE, PA, 16501

CHAMBERS OF CHIEF MAGISTRATE JUDGE RICHARD A. LANZILLO

May 1, 2023

To Whom It May Concern:

I am delighted to offer this letter of recommendation for Simon Peter Mizner, of Case Western Reserve University School of Law. I understand he has applied to you for a position as a law clerk.

Simon Peter served as a judicial extern in my Chambers and excelled in his work with the Court. He completed all of his assignments on-time and provided interesting and informative insights to me and my staff on a variety of issues and topics. His commitment to the projects assigned to him showed not only a drive to succeed but a willingness to learn and a receptivity to constructive criticism when offered.

As his grades reflect, he has done exceedingly well in his course work. Simon Peter is also an excellent legal writer. I note that he is an associate editor of the Case Western Reserve University's *Health Matrix: Journal of Law-Medicine*.

I have a practice of including my summer interns and externs in case management, status conferences, and court proceedings. Simon Peter acquitted himself admirably in these public situations. He always acted professionally and courteously with lawyers, parties, and all other members of the public he came in contact with.

Additionally, Simon Peter is an affable person who quickly made friends with everyone in the Courthouse. As a testament to his generous personality, he was greatly missed by all who made his acquaintance here upon his return to university. I have no doubt you would enjoy having him in Chambers.

In sum, I have no reservations in recommending Simon Peter to you. If I can be of any further assistance to you, please do not hesitate to contact me.

Sincerely,



Richard A. Lanzillo  
Chief United States Magistrate Judge

June 06, 2023

The Honorable Juan Sanchez  
James A. Byrne United States Courthouse  
601 Market Street, Room 14613  
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am pleased to recommend Simon Peter Mizner for a position as a law clerk in your chambers. Simon was in my Legal Writing, Experiential Learning, Advocacy, and Professionalism III ("LLEAP III") course at Case Western Reserve University School of Law in the Spring 2023 semester. Based on my experience working with Simon Peter, he is an excellent candidate for a federal clerkship.

In LLEAP III, students build on the legal research, writing, and analysis skills they learned in their first year by working on a simulated case from the initial client interview through opening statement at trial. They draft pleadings; conduct discovery, which includes taking a deposition; communicate with clients through interviews, emails, and letters; participate in case-management and pre-trial conferences; and draft a response to a dispositive motion. Students work in teams on several projects, so they are responsible for planning meetings, dividing the work, and deciding how to complete each project.

I was lucky to have Simon Peter in my class. His written work was consistently among the best in class and always exhibited thorough, well-reasoned, and well-organized analysis. He often spotted critical, but nuanced, portions of cases that his classmates glossed over. And he scoured the record to provide detailed factual support for his arguments. On every assignment, he earned one of the top grades in the class, and he ended the semester with an A-.

Simon Peter has strong interpersonal skills. During the deposition, he asked strategic questions that would make a powerful transcript. In the pre-trial conference, he thoughtfully answered difficult questions from his client and collaborated with the client on a cogent trial strategy. And his opening statement was fantastic; he synthesized a huge amount of information into a simple and compelling story. He also was an integral part of his team. His teammates gave him the highest rating in his peer evaluation at the end of the semester, noting that he "was always willing to step up and do something that many of us were not familiar with....He is a really great leader!"

Simon Peter is driven and self-motivated. While his work was excellent from the beginning, he was still eager to use the course to improve his research, writing, and analysis skills. He took advantage of both mandatory and optional conferences by coming prepared with solid rough drafts and perceptive questions. I enjoyed working with Simon Peter in conferences because he wanted constructive feedback and was always upbeat, no matter how busy he may have been with his other classes and obligations.

Because of Simon Peter's research, writing, and analysis skills as well as his work ethic, personality, and work experiences, including as a federal judicial extern, I am confident that he would be a valuable addition to your staff. If you have any questions about his candidacy, please do not hesitate to contact me at (216) 368-2970 or email me at [jennifer.cupar@case.edu](mailto:jennifer.cupar@case.edu).

Sincerely,

Jennifer I. Cupar  
Case Western Reserve University School of Law  
Director, LLEAP Program  
Professor, Lawyering Skills

Jennifer Cupar - [jik@case.edu](mailto:jik@case.edu)



SCHOOL OF LAW  
CASE WESTERN RESERVE  
UNIVERSITY

Case Western Reserve University  
School of Law  
11075 East Boulevard  
Cleveland, Ohio 44106  
Direct Dial: (216) 288-3959

May 1, 2023

Re: Simon Peter Mizner

To whom it may concern:

I write to recommend Simon Peter Mizner wholeheartedly.


I am an adjunct professor at Case Western Reserve University Law School. Simon Peter was a student in my Professional Responsibility – Litigation Ethics class in the fall semester of 2023. In our class, students are required to prepare a five-minute oral argument on an assigned hypothetical case for most class sessions. This feature of our class assignments requires each student to analyze the assigned case independently and to use and practice oral advocacy skills.

Simon Peter was, by far, the best student in my class and he received the highest grade in the course. He was always very well prepared. His presentations were well-researched and well-reasoned. He also displayed excellent oral advocacy skills. His manner of presentation was polished and highly effective. Further, Simon Peter not only was ready to discuss his assignment, but he was also very well prepared to discuss all the cases assigned for each class.

Simon Peter's father is a lawyer and Simon Peter worked in his father's firm as a clerk. His experience there showed in our class. His comments showed a sophisticated understanding of the rules and issues presented – and generally, of what the practice of law entails.

Prior to my retirement in 2018, I was a litigation partner with Jones Day for 38 years. If I was still in active practice, I would readily welcome Simon Peter to be a member of my litigation team.

Very truly yours,

  
David A. Kutik  
Adjunct Professor of Law

\*\*The following is from a memorandum prepared in the course of my work with the District Court.\*\*

IN RE: How to Handle Supplements to Existing Complaints

You asked me to explore Rule 15 of the Federal Rules of Civil Procedure and how the Court should respond when pro se prisoner plaintiffs file documents with a complaint or after a complaint is filed. Frankly, the Third Circuit has not definitively answered this question, but there are emerging trends that could be helpful guidance. First, the Court should consider each document individually in determining the type of document it is and the substance of the document. Second, the Court should use its discretion to classify documents in a way that promotes justice and productivity in the courts. This combination will likely lead to the appropriate treatment of documents in most cases.

**I. Not all filings are created equally, and the Court should treat documents differently based on whether the document clarifies claims and facts already pleaded or sets out new facts and claims.**

Under Rule 15 (a), a party may amend a pleading once within twenty-one days of service, with written consent from the opposing party, or with leave from the Court, which should be freely given. Fed. R. Civ. P. 15 (a). Rule 15 (d) permits the Court, “[o]n motion and reasonable notice,” to allow a party to supplement a pleading with documents that describe any “transaction, occurrence, or event” which occurred after the original pleading was filed. Fed. R. Civ. P. 15 (d). The Court should assess if the documents submitted by pro se prisoner plaintiffs clarify existing claims and facts or introduce new ones. The title of a filing is not nearly as important as the substance of the filing, and it is up to the Court to properly classify documents as amendments or supplements based on substance. *Garrett v. Wexford Health*, 938 F.3d 69, 81 (3d Cir. 2019).

In *Garrett*, a prisoner sued prison officials before completing the grievance process but was released from prison just over a year after filing the original complaint. *Id.* at 76-78. Before his release, the plaintiff filed a complaint and two amended complaints and after his release he filed two more amended complaints. *Id.* at 76-78, 81. Before the fourth amended complaint was filed, the Court held that the third amended complaint should be treated as both an amended complaint and a supplemental complaint. *Id.* at 81-82. The third amended complaint set out new claims related to the facts of the original complaint and included new facts and claims which occurred after the filing of the original complaint, satisfying the substance requirements of Rule 15 (a) and (d). *Id.* at 81-82. The Court also held “that where a party's status determines a statute's applicability, it is his status at the time of the amendment and not at the time of the original filing that determines whether a statutory precondition to suit has been satisfied.” *Id.* at 82. Put differently, although under the Prison Litigation Reform Act (PLRA) prisoners are required to exhaust their administrative remedies before suing, if the prisoner is released while the lawsuit is pending, the plaintiff is no longer required to abide by the PLRA, and it is inconsequential that the administrative remedies were not exhausted. *Id.* at 81-82.

The Court’s first point gives this Court authority to determine whether a filing should be treated as an amendment or a supplement, based on the requirements set out in Rule 15. But there are certain documents that should generally be considered supplements. Filings informing the Court that the plaintiff exhausted the grievance process should be treated as supplements. *Korb v. Haystings*, 860 F. App’x 222, 225-26 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 1111 (2022). In *Korb*, the plaintiff filed a notice that he completed the grievance process without leave from the Court. *Id.* at 224-26. The Third Circuit held that the notice should still be treated as a supplement, despite leave not being given. *Id.* Letters or documents informing the Court of



a change in status of the grievance process are supplemental because the change occurred after the filing of the initial complaint. *Id.* at 226. It is unclear if leave must still be given to allow plaintiffs to file such documents as supplements, but *Korb* suggests it is not. *Id.* at 224-25. On the other hand, the *Garrett* Court highlighted the importance of a plaintiff receiving proper leave from the Court to file a supplement. 938 F.3d at 82. At this crossroad, since “[t]he decision of whether to permit a plaintiff to file an amended or supplemental complaint under Rule 15 is within a District Court’s discretion and is guided by Rule 15’s liberal standards,” perhaps it is also within the Court’s discretion to decide whether leave is required. *Id.* at 89. The issue now turns to the Court’s responsibility to promote justice, despite a party’s procedural failing.

**II. When the Court receives documents from pro se prisoner plaintiffs, the Court should use its broad discretion to admit or deny the documents to ensure that justice is promoted.**

The next issue is determining the Court’s most appropriate response when a pro se prisoner plaintiff files documents without leave. The court has held that “while Rule 15 generally provides that leave to amend should be freely given when justice so requires, the [D]istrict [C]ourt still retains broad discretion to deny a motion to amend or supplement a complaint.” *Abney v. Younker*, No. 1:13-CV-1418, 2016 WL 1559154, at \*2 (M.D. Pa. Apr. 18, 2016). In *Abney*, the pro se prisoner plaintiff motioned for leave to file a supplemental complaint but was denied. *Id.* at \*1. The court said that allowing the supplement would oppose “the animating principle behind Rule 15(d), which is ‘to make pleadings a means to achieve an orderly and fair administration of justice.’” *Id.* at \*2 (quoting *Griffin v. County Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 227 (1964)).

The Court’s pursuit of justice, coupled with its discretion to allow amended and supplemental pleadings, may establish the Court’s authority to allow filings to become supplements or

amendments even when leave is not requested. In doing so, the Court should consider factors like the “justiciable disposition of the case, the delay or inconvenience in permitting a plaintiff to supplement [a pleading], any resulting prejudice to the other parties in the action, and whether the supplement would be futile.” *Hill v. Harry*, No. 1:21-CV-01424, 2022 WL 1406922, at \*3 (M.D. Pa. May 4, 2022) (quoting *Green v. Klinefetter*, No. 3:16-cv-2367, 2019 WL 80443, at \*3 (M.D. Pa. Jan. 2, 2019)). In *Hill*, the court denied the plaintiff’s request for leave to file a supplemental complaint after considering the above factors. *Id.* at \*4. The listed factors are no less relevant when a party fails to request leave. These factors, along with the “understanding that a court must make reasonable allowances to protect pro se litigants from the inadvertent forfeiture of important rights due merely to their lack of legal training” could guide the Court to understand the leave requirements of Rule 15 to be loosely applied to pro se prisoner plaintiffs. *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019).

The Court has not said this outright, but it appears to be the direction it is heading. In *Shane v. Fauver*, the Court addressed the issue of when a “deficiency in a complaint could be cured by amendment but leave to amend is not sought.” 213 F.3d 113, 116 (3d Cir. 2000). The Court found that “Circuit case law... holds that leave to amend *must* be given in this situation as well.” *Id.* (emphasis added). In *Shane*, the plaintiff’s claim was dismissed under Rule 12(b)(6) without leave to amend and with prejudice.<sup>1</sup> *Id.* at 115. The defendants argued that such action was proper under the PLRA, but the Court disagreed because reading the PLRA like that would create an overly harsh and pointless rule that would nullify Rule 15(a). *Id.* at 117.

<sup>1</sup> The plaintiff was represented by counsel and was not pro se, possibly suggesting that leeway should be given to attorneys if it is in the interest of justice.

The *Shane* verdict shows the importance of holding justice at the center of the Court's reaction to pro se prisoner plaintiffs' filings. After all, Rule 15(d) is designed to allow a case to be decided on its merits. 938 F.3d at 83-84. The Court has also allowed supplements to be filed late when they relate back to the original complaint and cure deficits that the complaint may have. *Id.* (citing *T Mobile Ne. LLC v. City of Wilmington, Del.*, 913 F.3d 311, 328-29 (3d Cir. 2019)). Once more, this shows that the Court has discretion to make exceptions to Rule 15 when justice requires.

Although the facts of *Shane* are paradoxical to the issue this Court regularly faces, the principle remains the same: the interest of justice *can be* strong enough to supersede a party's failure to request leave. There does not seem to be a one-size-fits-all rule, so each case and document should be viewed independently and in the context of the case and its procedural history.

### III. Conclusion.

Rule 15 offers little direction on how to treat documents, letters, and filings submitted by pro se prisoner plaintiffs and existing case law lacks any bright line rule. But the Court has made a few things clear. First, each document filed should be evaluated based on its substance rather than what it is titled, and the Court should classify documents appropriately. Second, documents submitted that inform the Court of the plaintiff's grievance status should be treated as supplements regardless of if leave was requested. Third, when the Court uses its broad discretion to grant or deny leave to amend or supplement a pleading, it should consider the effect the decision will have on the pursuit of justice. And fourth, even if leave to supplement or amend a pleading is not requested, justice may still require the Court to allow parties to alter their pleadings. Ultimately, the pursuit of justice is paramount to all else.

**Applicant Details**

First Name **Anstasia**  
 Last Name **Moawde**  
 Citizenship Status **U. S. Citizen**  
 Email Address [moawde.a@northeastern.edu](mailto:moawde.a@northeastern.edu)  
 Address

**Address**  
**Street**  
**10 Carl Street**  
**City**  
**Newton**  
**State/Territory**  
**Massachusetts**  
**Zip**  
**02461**  
**Country**  
**United States**

Contact Phone Number **5082236646**

**Applicant Education**

BA/BS From **Suffolk University**  
 Date of BA/BS **May 2021**  
 JD/LLB From **Northeastern University School of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=12205&yr=2013](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=12205&yr=2013)  
 Date of JD/LLB **May 30, 2024**  
 Class Rank **School does not rank**  
 Does the law school have a Law Review/Journal? **Yes**  
 Law Review/Journal? **No**  
 Moot Court Experience **No**

**Bar Admission**

### **Prior Judicial Experience**

Judicial  
Internships/           **No**  
Externships  
Post-graduate  
Judicial Law       **No**  
Clerk

### **Specialized Work Experience**

#### **Recommenders**

Garin, Patricia  
pgarin@jsmtlegal.com  
Morte, Marissa  
mmorte@mgmlaw.com  
617- 670-8303

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Anastasia Moawde**

Newton, MA 02461 | moawde.a@northeastern.edu | 508-223-6646

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June 17, 2023

The Honorable Juan Sánchez  
United States District Court  
601 Market Street  
Philadelphia, PA 19106

Dear Judge Sánchez:

I am a third-year law student at Northeastern University School of Law (NUSL), writing to apply for a 2024 clerkship position in your chambers. This opportunity is of particular interest to me because it will allow me to contribute to the administration of justice while providing thorough and well-reasoned analysis of legal issues and drafting clear and concise opinions. I believe I am a strong candidate for this opportunity, with both academic and practical experience that I am eager to bring to the U.S. District Court of Pennsylvania.

Since beginning law school, I have been developing my legal analysis skills, as well as client communication and counseling skills. In the summer of 2022, I served as a student attorney in NUSL's Prisoner's Rights Clinic, where I represented a client convicted of second-degree murder during their parole hearing. In representing this client, I researched relevant Massachusetts parole statutes and regulations to develop arguments supporting my client's release on parole. I also wrote a supporting memo detailing his early life experience, his institutional history, and his parole plan. This work did not only further hone my legal analysis and skills, but also my time management and client communication skills.

As an intern at Manning, Gross + Massenburg LLP, I developed highly researched memoranda addressing complex legal questions for the firm's clients from different jurisdictions. In addition, I analyzed large-scale discovery reviews to build arguments in favor of our clients and drafted corresponding memoranda summarizing relevant information for attorney use. Lastly, I assisted in writing an article summarizing "A Year of Progress Under EPA's PFAS Strategic Roadmap" where we discussed recent changes under EPA's PFAS regulations. This article is now published on their website.

During my time at the Center for Law, Equity, and Race (CLEAR), I have had the privilege of leading a comprehensive law review article focusing on gun liability and its potential impact on reducing mass shootings. This article will delve into the crucial role of liability insurance and the implementation of red flag laws as proactive measures to decrease the occurrence of such tragic incidents. In my capacity as a lead writer for this article, I have conducted extensive research, collecting relevant statistics and data to support our arguments. I have skillfully analyzed and organized this information, translating it into a comprehensive outline that serves as the backbone of the law review article. The article itself will explore a range of important topics, including the examination of Second Amendment arguments, the exploration of potential solutions, the analysis of pertinent case studies, and a comprehensive assessment of the feasibility of the proposed policies. Using critical thinking and legal analysis, I aim to engage readers to the ongoing discussion on gun liability.

At Harvard Immigration & Refugee Clinical Program (HIRC) at GBLS, I have had the ability of working in a dynamic and fast-paced environment where I am able to further develop my legal research and writing abilities. I am tasked with drafting legal briefs, memos, and affidavits, ensuring that they are clear, concise, and well-supported by legal authorities. Additionally, I am working with diverse asylum seekers. This experience has strengthened my ability to communicate complex and emotional legal issues in a compassionate and accessible manner.

I am eager to meaningfully contribute to the important work of your chambers. Enclosed please find my resume, law school transcript, a writing sample, and letters of recommendation from Professor Patricia Garin and Attorney Marissa Morte. I appreciate your time and consideration.

Sincerely,  
Anastasia Moawde

## Anastasia Moawde

Newton, MA 02461 | moawde.a@northeastern.edu | 508-223-6646

### EDUCATION

#### **NORTHEASTERN UNIVERSITY SCHOOL OF LAW**, Boston, MA

Candidate for Juris Doctor, May 2024

1L Legal Skills Project: Researching the interactions between DCF, mental health services, schools, courts, DYS, and law enforcement to support CFJJ's reports on preventing child involvement in DYS.

Activities: Leadership role in the Coptic Lawyers Student Bar Association

#### **SUFFOLK UNIVERSITY**, Boston, MA

Bachelors of Arts, *Magna Cum Laude*, in Sociology, GPA: 3.79, May 2021

Honors: Honors Program; Dean's List (2017-2021); Alpha Kappa Delta (Sociology Honors Society)

Selected Award: Distinguished Delegate Award - Model United Nations, NY; The National Society of Leadership and Success

### LEGAL EXPERIENCE

#### **Harvard Immigration & Refugee Clinical Program (HIRC) at GBLS**, Boston, MA

*Law Clerk*

June 2023 – Present

- Providing legal representation to asylum-seeking clients, gaining expertise in immigration law and effectively advocating for their rights.
- Engaging in thorough analysis of clients' cases, carefully reviewing and dissecting case histories to develop a comprehensive understanding of their legal and personal circumstances.
- Conducting one-on-one interviews while fostering trust and effective communication with clients with various language proficiency levels.

#### **Center for Law, Equity, and Race (CLEAR)**, Boston, MA

*Research Assistant*

January 2023 – Present

- Conducting extensive research on gun liability insurance while exploring the effectiveness of implementing stricter laws to mitigate mass shootings.
- Spearheading a comprehensive law review article addressing the intersection of gun liability and preventive measures against mass shootings.
- Assessing current gun liability policies and case law to identify gaps in legislation and proposing recommendations for more effective preventive measures.
- Communicating research findings through written reports and weekly meetings.

#### **Manning Gross + Massenburg LLP**, Boston, MA

*Law Clerk*

September 2022 – December 2022

- Co-authored and published an article titled "A Year of Progress Under EPA's PFAS Strategic Roadmap" with an associate, summarizing recent changes under EPA's PFAS regulations.
- Researched case law relevant to client's cases and drafted memoranda to communicate findings. Drafted a comprehensive opposition to a motion for summary judgment, conducting research to assess the strength of the plaintiff's argument against the defendant.

#### **Prisoner's Rights Clinic, Northeastern University School of Law**, Boston, MA

*Student Attorney*

May 2022 – August 2022

- Prepared client for an upcoming parole hearing by articulating the facts of the crime to gain the parole board's approval.
- Read and interpreted discovery material and the Code of Massachusetts Regulations to best frame client's circumstances.
- Anticipated possible opposition to client's release and developed strategies to mitigate those concerns.

## NORTHEASTERN UNIVERSITY



# Northeastern University Registrar

## Office of the University Registrar

230-271

360 Huntington Avenue

Boston, MA 02115-5000

email: transcripts@northeastern.edu

web: <http://www.northeastern.edu/registrar/>

Record of: Anastasia Moawde

NUID: 002106000

Issued To: ANASTASIA MOAWDE

MOAWDE.A@NORTHEASTERN.EDU

REFNUM:05572306

## Primary Program

Juris Doctor

College : School of Law

Major : Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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## INSTITUTION CREDIT:

Fall 2021 Law Semester ( 08/30/2021 - 12/22/2021 )

LAW 6100 Civil Procedure 5.00 P 0.000

LAW 6105 Property 4.00 P 0.000

LAW 6106 Torts 4.00 P 0.000

LAW 6160 Legal Skills in Social Context 2.00 H 0.000

LAW 6165 LSSC: Research &amp; Writing 2.00 H 0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Spring 2022 Law Semester ( 01/10/2022 - 05/06/2022 )

LAW 6101 Constitutional Law 4.00 P 0.000

LAW 6102 Contracts 5.00 P 0.000

LAW 6103 Criminal Justice 4.00 H 0.000

LAW 6160 Legal Skills in Social Context 2.00 H 0.000

LAW 6165 LSSC: Research &amp; Writing 2.00 H 0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Summer 2022 Law Semester ( 05/09/2022 - 08/23/2022 )

LAW 7351 Prisoners' Rights Clinic 8.00 HH 0.000

LAW 7443 Professional Responsibility 3.00 P 0.000

LAW 7640 Information Security Law 3.00 P 0.000

LAW 7672 Data Privacy Compliance 3.00 H 0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Fall 2022 Law Semester ( 08/29/2022 - 12/23/2022 )

COOP: MG + M LLP

Boston, MA

IN PROGRESS WORK

LAW 7964 Co-op Work Experience 0.00 IN PROGRESS

In Progress Credits 0.00

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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## Institution Information continued:

Spring 2023 Law Semester ( 01/09/2023 - 04/29/2023 )

LAW 7358 Social Welfare Law 3.00 P 0.000

LAW 7495 Adv Crim Procd: Investigation 3.00 H 0.000

LAW 7614 Law Practice Management 3.00 HH 0.000

Ehrs: 9.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

IN PROGRESS WORK

LAW 7332 Evidence 4.00 IN PROGRESS

LAW 7530 Education Law 3.00 IN PROGRESS

In Progress Credits 7.00

Summer 2023 Law Semester ( 05/08/2023 - 08/26/2023 )

COOP: Harvard Immigration &amp; Refugee Clinical

Program (HIRC) at GBLS

Boston, MA

IN PROGRESS WORK

LAW 7940 Reflections on Lawyering 1.00 IN PROGRESS

LAW 7941 Pub Int Pub Serv Field Placemt 7.00 IN PROGRESS

LAW 7966 Public Interest Co-op Work Exp 0.00 IN PROGRESS

In Progress Credits 8.00

\*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\*

	Earned Hrs	GPA Hrs	Points	GPA
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TOTAL INSTITUTION 60.000 0.000 0.000 0.000

TOTAL TRANSFER 0.000 0.000 0.000 0.000

OVERALL 60.000 0.000 0.000 0.000

\*\*\*\*\* END OF TRANSCRIPT \*\*\*\*\*

Page: 1

Rebecca Hunter

Assoc VP &amp; University Registrar



Northeastern University, Office of the Registrar  
271 Huntington Ave.  
Boston, MA 02115

**SCALE OF GRADES AND COMMENTS TO ACCOMPANY TRANSCRIPTS**

**Effective Fall 2016:** College of Professional Studies undergraduate programs converted from a quarter system to a semester system. For student records including hours earned prior to fall 2016, the credit hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is now equivalent to a 3-credit semester course.

**Effective Fall 2009:** Northeastern University converted its Student Information System. All courses and Programs were converted.

**Northeastern University Course Numbering**

**UNDERGRADUATE**

**Orientation and Basic** 0001-0999

No degree credit

**Introductory Level (First year)** 1000-1999

Survey, Foundation and Introductory courses normally with no prerequisites and designed primarily for students with no prior background

**Intermediate Level** 2000-2999

(Sophomore/Junior year)

Normally designed for sophomores and above, but in some cases open to freshman majors in the department.

**Upper Intermediate Level (Junior year)** 3000-3999

Designed primarily as courses for juniors. Pre-requisites are normally required and these courses are pre-requisites for advanced courses.

**Advanced Level (Senior year)** 4000-4999

Designed primarily for juniors and seniors, or specialized courses. Includes research, capstone and thesis.

**GRADUATE**

**Orientation and Basic** 0001-0999

No degree credit

**1st level graduate** 5000-5999

Courses primarily for graduate students and qualified undergraduate students with permission

**2nd level graduate** 6000-6999

Generally for Master's only and Clinical Doctorate

**3rd level graduate** 7000-7999

Master's and Doctoral level classes. Includes Master's Thesis

**Clinical/Research/Readings** 8000-8999

Includes Comprehensive Exam Preparation

**Doctoral Research and Dissertation** 9000-9999

**Northeastern University Grade Scale**

Letter Grade	Numerical Equivalent	Explanation
A	4.0	Outstanding Achievement
A-	3.667	
B+	3.333	
B	3.0	Good Achievement
B-	2.667	
C+	2.333	
C	2.0	Satisfactory Achievement
C-	1.667	
D+	1.333	
D	1.0	Poor Achievement
D-	0.667	
F	0.0	Failure
I		Incomplete
IP		In Progress
NE		Not Enrolled
NG		Grade not reported by Faculty
S		Satisfactory (Pass/Fail basis; counts toward total degree requirements)
U		Unsatisfactory (Pass/Fail basis)
X		Incomplete (Pass/Fail basis)
L		Audit (no credit given)
T		Transfer
W		Course Withdrawal

**Course Comments**

E	Course excluded from GPA
HON	Honors level course
I	Course included in GPA

**LAW SCHOOL**

CR	Credit
F	Fail
H	Honors
HH	High Honors
I	Incomplete
MP	Marginal Pass
P	Pass

**Earned Hours**

Northeastern University offers both quarter hour and semester hour programs.

**Quarter Hours to Semester Hours Conversion Rate:** For student records including quarter hours, the approved semester hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is equivalent to 3 credit semester courses.



### **Northeastern University School of Law Grading and Evaluation System**

A global leader in experiential learning for over 50 years, Northeastern University School of Law (“NUSL”) integrates academics with practical skills as its core educational philosophy. To fulfill NUSL graduation requirements, law students must earn at least 83 academic credits and complete at least three terms of full-time, law-related work through “co-op,” our unique Cooperative Legal Education Program.

Consonant with the word “cooperative,” NUSL cultivates an atmosphere of cooperation and mutual respect, exemplified in our course evaluation system. NUSL faculty provide detailed feedback to students through narrative evaluations, designed to prepare law students for the practice of law. The narrative evaluations examine law student written work product, contributions to class discussions, results of examinations, specific strengths and weaknesses, and overall engagement in the course. Faculty also award the student a grade in each course, using the following categories:

- **High Honors**
- **Honors**
- **Pass**
- **Fail**

A small number of courses are evaluated using a Credit/No Credit evaluation system, instead of a grade. NUSL does not provide GPAs or class ranks.

NUSL transcripts include the following information:

- The course name, grade received, and number credits earned;
- The faculty’s narrative evaluation for the course; and
- All co-ops completed, and the evaluations provided by the co-op employer.

“In progress” notations on a transcript indicate that a student has not yet received an evaluation from faculty for a particular course.

During the Spring 2020 semester, due to the COVID-19 pandemic, all courses were subject to mandatory “Credit” or “Fail” evaluations, except for year-long courses LAW 6160 and 6165.

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	25261
<b>Course Title:</b>	Law Practice Management
<b>Course ID:</b>	LAW 7614
<b>Credits:</b>	3
<b>Term:</b>	Spring 2023 Law Semester
<b>Instructor :</b>	Lingos, Sofia
<b>Grade:</b>	High Honors

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**Course Description:**

This course challenges conventional law practice management by exploring means of methods of filling the market gap in the provision of legal services to middle class clients. Students will investigate and document ways to use improved marketing techniques, staffing patterns, technological innovations and a variety of other tools to provide legal services to underserved portions of the market in a sustainable and economically viable fashion. Students will conduct independent research to develop a law firm business plan; exploring a practice area of particular interest to them. This course is not solely geared toward the entrepreneurial attorney, but rather will assist anyone in the development of skills to bridge-the-gap between their theoretical education and its practical application to the practice of law.

**Performance Highlights:**

- Anastasia developed a law firm business to provide real estate legal services.
- She was an active class participant.
- She displayed a keen understanding of the practice area.
- Her access to justice mission and market research outlined the challenges faced by so many individuals and families in the Greater Boston housing market and provided thoughtful steps toward mitigation.
- She acknowledged the competitive market place and provided opportunities to compete.
- She did an excellent job in this course.

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<b>Date:</b>	6.2.2023 9:21PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	25261
<b>Course Title:</b>	Evidence
<b>Course ID:</b>	LAW 7332
<b>Credits:</b>	4
<b>Term:</b>	Spring 2023 Law Semester
<b>Instructor :</b>	Tumposky, Michael L.
<b>Grade:</b>	Pass

---

**Course Description:**

This course examines how courtroom lawyers use the evidence rules to present their cases—notably, rules regarding relevance, hearsay, impeachment, character, and experts. The approach to the study of evidence will be primarily through the “problem” method—that is, applying the provisions of the Federal Rules of Evidence to concrete courtroom situations. Theoretical issues will be explored as a way to deepen the student’s appreciation of how the evidence rules can and ought to be used in litigation.

**Performance Highlights:**

Your performance in the class was good. You have a solid understanding of the Rules of Evidence. Nice work.

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<b>Date:</b>	6.2.2023 1:54PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 25261  
**Course Title:** Education Law  
**Course ID:** LAW 7530  
**Credits:** 3  
**Term:** Spring 2023 Law Semester  
**Instructor :** Lopez, Jane  
**Grade:** High Honors

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**Course Description:**

Surveys current issues in U.S. education law. Topics may include high-stakes testing, school choice and the charter school movement, resegregation, special education, the school-to-prison pipeline, and school funding.

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**Performance Highlights:**

- You have a deep comprehension of the issues and your application of the relevant law and precedent is excellent.
  - Your responses to the exam demonstrated a thorough understanding of educational issues and your legal arguments were clear and well constructed.
  - Your engagement in class advanced class discussions in meaningful ways.
- 

**Date:** 5.30.2023 9:28PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 25261  
**Course Title:** Adv Crim Procd: Investigation  
**Course ID:** LAW 7495  
**Credits:** 3  
**Term:** Spring 2023 Law Semester  
**Instructor :** Zoltek-Jick, Rose  
**Grade:** Honors

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**Course Description:**

During this course, students will examine the law of criminal investigation. The primary focus of the course will be to present and discuss leading Supreme Court decisions in the field of constitutional criminal procedure. Students will study decisions which apply the Fourth, Fifth and Sixth Amendments and the Due Process Clause to the criminal justice process and the procedures through which criminal laws are enforced.

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**Performance Highlights:**

Overall, you did fairly good work in this course.

You wrote pointed, precise motions and essays on your final take-home exam, showing a solid and secure knowledge of most of the precedents and issues covered in this course. Your analysis was incisive, and your writing was clear and accessible. Your guide to the admissibility of a defendant's statements that you submitted earlier in the term was less strong, but you improved over the course of the semester.

In the first question on the take-home exam, you were asked to create five fact patterns that would involve Fourth Amendment issues and then argue as to whether the police misconduct you described would, under existing precedents, result in suppression of any evidence obtained by the police. You used this opportunity to write fact patterns that almost exactly mirrored existing precedents. You demonstrated a strong understanding of those precedents and your overall knowledge of how to structure a motion is right on target.

The second part of the exam was in essay format and you were asked which three cases were the most "important" ones that you read during the course. You picked Mapp, Berghuis and the recent case of Torres v. Madrid, and grouped those cases together as ones providing additional protections and information to defendants. Your short essay was a good treatment of this theme.

Your mid-term Guide on a defendant's statements was less strong, as you only covered the arguments under Miranda, and not the Sixth Amendment nor the due process arguments that can suppress a defendant's statements. You have the basic law down, but your work even on Miranda would have been helped by laying out the precedents for the propositions you advanced.

You are generally well-prepared to use your knowledge of criminal procedure on co-op.

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**Date:** 5.26.2023 2:48PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	25261
<b>Course Title:</b>	Social Welfare Law
<b>Course ID:</b>	LAW 7358
<b>Credits:</b>	3
<b>Term:</b>	Spring 2023 Law Semester
<b>Instructor :</b>	Williams, Lucy A.
<b>Grade:</b>	Pass

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**Course Description:**

This course examines American public assistance as a legal institution. After reviewing the historical, sociological and juridical roots of the welfare system, students examine the laws governing major assistance programs, especially eligibility requirements, rules governing grant determination, work and family rules, and procedural rights. Primary emphasis is on statutory and regulatory construction. The course explores methods by which lawyers can deal with the system: advocacy in the administrative process, litigation, legislative reform and representation of recipient organizations.

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**Performance Highlights:**

- You grappled with the difficult concepts of entitlement, the privileging of waged work and conditioning benefits on citizenship in the context of social welfare law, programs, and policy.
  - You applied central theoretical concepts and incorporated secondary sources to deepen your analysis. Your discussion of the indeterminacy of the legal definition of “employee” was particularly strong.
  - You were able to apply your substantive knowledge of the law in factual scenarios to advocate effectively for particular legal outcomes.
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<b>Date:</b>	5.26.2023 1:22PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 14153  
**Course Title:** Prisoners' Rights Clinic  
**Course ID:** LAW 7351  
**Credits:** 8  
**Term:** Summer 2022 Law Semester  
**Instructor s :** Garin, Patricia  
 Holohan, Wallace  
**Grade:** High Honors

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**Course Description:**

Focuses on learning the law and procedures of parole and prisons in Massachusetts. Students handle a parole release hearing for a state prisoner serving a life sentence, with the possibility of parole, before all seven members of the parole board at a public hearing. In preparing one of these cases, students gain hands-on experience in criminal law and procedure, sentencing law, probation, prison classification and disciplinary systems, and often immigration law. Offers students an opportunity to develop and refine important advocacy skills including interviewing and counseling, case strategy development, thorough investigation techniques, witness preparation, and making strong opening and closing statements. The clinic is a mix of seminar class, individualized supervision meetings, and direct casework, which requires approximately a 25-hour weekly commitment.

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**Performance Highlights:**

During the semester you and another student represented a prisoner serving a life sentence at a parole release hearing before the full Massachusetts Parole Board. Your client had been convicted in 1972 of armed robbery and related crimes for kidnapping a motorist, shooting him, and leaving him for dead in order to use the victim's car in a bank robbery. He was initially paroled in 1987 but had his parole revoked in 1997 on allegations of serious child abuse of one of his daughters. He was not convicted of that offense. He was again granted parole in 2004, only to have his parole revoked in 2007 for technical violations of parole. Since that time, he was denied parole in 2012 and 2018.

In preparing for the hearing, you conducted numerous in-depth interviews with your client and conducted a detailed investigation into his underlying conviction and his parole revocations – all of which had occurred during the past 51 years. You also carefully documented your client's successful completion of educational, treatment, and rehabilitative programs. After interviewing the client intensively and reviewing his parole records, it became clear that he was being denied parole and held in custody based on the 1997 unproven allegations of child abuse. So, you decided to interview the child in question, who is now an adult. Subsequently, you were able to get an affidavit from her stating that she had fabricated these allegations because her father had wanted her to end a relationship that she was having with a 38-year man when she was only 17 years old. You also developed a viable parole plan with lots of structure to ensure he succeeds on parole this time.

Your presentation at the hearing was skillfully done. At the outset of the hearing, your client gave a very strong apology to all the people he has harmed as a result of this murder and his last parole failure. Your opening statement was articulate, well-reasoned and very persuasive. Your timing and delivery were also excellent. Your client was well prepared to testify and made a very credible witness. He did an incredible job describing his past criminal behavior and mistakes, and how he has successfully addressed those issues through programming. You worked hard preparing this case and it showed throughout the hearing.

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**Date:** 10.27.2022 3:55PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 14153  
**Course Title:** Data Privacy Compliance  
**Course ID:** LAW 7672  
**Credits:** 3  
**Term:** Summer 2022 Law Semester  
**Instructor :** Hart, Christopher E.  
**Grade:** Honors

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**Course Description:**

Introduces the tools needed to navigate the complex world of data privacy regulation. By following the growth of a hypothetical startup company as it confronts new data privacy and security issues, offers students an opportunity to evaluate the principles grounding data privacy regulations around the world; examine emerging data privacy legal regimes of various countries; and consider privacy laws, why they matter, and what compliance concerns they raise. Encompasses privacy and security issues involved in regulatory compliance, data breach response, government and internal investigations, litigation, and mergers and acquisitions. Also considers special circumstances of cross-border litigation and transactions, the special problems raised by supply chains and corporate social responsibility, and emerging concerns arising from big data and increasingly sophisticated artificial intelligence.

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**Performance Highlights:**

Anastasia demonstrated a strong command of a complex and dense set of material. Her written work was very good, in particular her written assignments relating to a data breach response scenario and an end-of-course compliance memorandum. Through her class discussions, Anastasia provided thoughtful observations that assisted class's understanding of the material. I was very happy with Anastasia's very good work in this course.

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**Date:** 10.17.2022 6:18AM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	14153
<b>Course Title:</b>	Information Security Law
<b>Course ID:</b>	LAW 7640
<b>Credits:</b>	3
<b>Term:</b>	Summer 2022 Law Semester
<b>Instructor :</b>	O'Brien, David R.
<b>Grade:</b>	Pass

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**Course Description:**

This seminar will conduct a bleeding edge discussion of the state of the legal art in information security law – what is known in DC policy circles as “cybersecurity.” While this field of law started in the 2000’s by focusing on data breach notification, today the stakes are much higher. Consumer products that rely on computer code can now kill us, and one appropriately targeted zero day exploit could potentially devastate our economy. We will discuss why data breaches continue to run rampant, what duties of data care and code safety are owed to consumers, and how various government agencies are tackling the consumer protection and national security issues implicated by vulnerable computer code. You will never look at your gadgets the same way again.

**Performance Highlights:**

Acquired a thorough overview of US federal and state laws, regulations, and policies concerning the broad fields of information security, cybersecurity, and data protection as well as related aspects of national security and law enforcement

Wrote a thoughtful seminar paper about the application of the General Data Protection Regulation to virtual reality headsets

Gave a very strong oral presentation of seminar paper topic in class

Frequently volunteered and made valuable contributions to class discussions

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**Date:** 9.22.2022 10:32PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	14153
<b>Course Title:</b>	Professional Responsibility
<b>Course ID:</b>	LAW 7443
<b>Credits:</b>	3
<b>Term:</b>	Summer 2022 Law Semester
<b>Instructor :</b>	Drew, Melinda F.
<b>Grade:</b>	Pass

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**Course Description:**

This course focuses on the legal, ethical and professional dilemmas encountered by lawyers. Emphasis is on justice as a product of the quality of life that society provides to people rather than merely the process that the legal system provides once a crime or breach of duty has occurred. The course also provides students with a working knowledge of the American Bar Association's Model Rules of Professional Conduct and the Code of Professional Responsibility as well as an understanding of the underlying issues and a perspective within which to evaluate them. In addition, the course examines the distribution of legal services to poor and non-poor clients.

**Performance Highlights:**

You wrote an excellent answer to your assigned conflicts problem. It was well written and organized and analyzed the issue presented well. You also participated in a panel in which you along with some of your classmates discussed the material we were studying for that day. The panel was successful at engaging other members of the class in discussion.

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<b>Date:</b>	9.20.2022 3:53PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 13490  
**Course Title:** Constitutional Law  
**Course ID:** LAW 6101  
**Credits:** 4  
**Term:** Spring 2022 Law Semester  
**Instructor :** Paul, Jeremy R.  
**Grade:** Pass

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**Course Description:**

Studies the techniques of constitutional interpretation and some of the principal themes of constitutional law: federalism, separation of powers, public vs. private spheres, equality theory and rights analysis. The first part of the course is about the powers of government. The second part is an in-depth analysis of the 14th Amendment.

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**Performance Highlights:**

You demonstrated sound understanding of the law of “standing.”

You displayed admirable sensitivity to constitutional protection for free speech.

You showed fundamental grasp of how the constitution’s reach is limited by the state action requirement.

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**Date:** 6.13.2022 10:12AM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 13490  
**Course Title:** Contracts  
**Course ID:** LAW 6102  
**Credits:** 5  
**Term:** Spring 2022 Law Semester  
**Instructor :** Phillips, David M.  
**Grade:** Pass

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**Course Description:**

This course examines the legal concepts governing consensual and promissory relationships, with emphasis on the historical development and institutional implementation of contract theory, its relationship and continuing adaptation to the needs and practice of commerce, and its serviceability in a variety of non-commercial contexts. Topics covered include contract formation, the doctrine of consideration, remedies for breach of contracts, modification of contract rights resulting from such factors as fraud, mistake and unforeseen circumstances, and the modern adaptation of contract law to consumer problems. This course also introduces students to the analysis of a complex statute: the Uniform Commercial Code.

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**Performance Highlights:**

You successfully passed the challenging multiple-choice first part of the examination.

Your answers to the three essay problems evinced knowledge of contract law.

Thank you for your active participation in class.

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**Date:** 6.2.2022 3:43PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	13490
<b>Course Title:</b>	LSSC: Research & Writing
<b>Course ID:</b>	LAW 6165
<b>Credits:</b>	2
<b>Term:</b>	Spring 2022 Law Semester
<b>Instructor :</b>	Bloom, Elizabeth M.
<b>Grade:</b>	Honors

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**Course Description:**

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

**Performance Highlights:**

Anastasia's legal research, writing, and analytical skills improved over the course of the year. She completed a series of memorandum assignments, focusing on objective writing in the fall and transitioning into persuasive writing in the spring. Her work culminated in a memorandum of law in support of a motion to suppress a coerced juvenile confession. In it, Anastasia drafted an analysis that included support from the factual record and the relevant case law. She also demonstrated the ability to find relevant authority and apply it in a legal analysis, and she successfully completed a timed, in-class research and writing assessment. Anastasia's oral communication and advocacy skills are well-developed. At her oral argument, she made effective use of the facts, law, and policy to present a convincing argument on behalf of her client. Finally, Anastasia recognized the importance of communicating with her professor and Teaching Assistants on an ongoing basis to support her academic growth. I was particularly impressed with her consistent willingness to engage actively with the feedback she received.

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<b>Date:</b>	5.31.2022 3:55PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 13490  
**Course Title:** Legal Skills in Social Context  
**Course ID:** LAW 6160  
**Credits:** 2  
**Term:** Spring 2022 Law Semester  
**Instructor :** Bloom, Elizabeth M.  
**Grade:** Honors

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**Course Description:**

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

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**Performance Highlights:**

Anastasia worked with a "Law Office" of fifteen first-year law students to provide research and recommendations for Citizens for Juvenile Justice (CfJJ) to help interrupt the child welfare to juvenile justice pipeline. The students examined the interacting systems—Department of Children and Families, mental health services, schools, courts, Department of Youth Services, and law enforcement—in the lives of child-welfare involved middle school students in Hampden County, Massachusetts, with a specific focus on the role of trauma in causing behaviors that are punished rather than treated. Their work culminated in an excellent written deliverable with concrete data and detailed recommendations to inform CfJJ's advocacy efforts to support welfare-involved youth. In addition to providing an impressive work product, the Law Office conducted an outstanding one-hour interactive presentation of their findings for CfJJ and the Northeastern community. As a whole, the Law Office was collaborative, collegial, and high-functioning. The students' performance—individually, in sub-committees, and as a full group—was strong.

**Individual Comments:** Anastasia's work on the project was strong. Throughout the year, she meaningfully engaged with the broad themes of the course including systemic oppression and law as a social construct. She was always willing to pitch in behind the scenes, demonstrating her collaborative nature. Anastasia shared her talents with the group in numerous ways. She served as member of the research team analyzing the social science research to understand the role trauma plays in the lives of dually involved youth. As a member of the citation team, she worked to ensure the deliverable was accurate and professional. She was also tasked with helping to publicize the final community presentation. In each of these roles, Anastasia took her work seriously and contributed insightful comments and questions that helped further the understanding of the team as a whole. Overall, Anastasia was a quiet but steady presence whose work helped move the project forward. I really enjoyed watching her grow over the course of the year as she gained skills and confidence.

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**Date:** 5.31.2022 3:50PM



**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	13490
<b>Course Title:</b>	Criminal Justice
<b>Course ID:</b>	LAW 6103
<b>Credits:</b>	4
<b>Term:</b>	Spring 2022 Law Semester
<b>Instructor :</b>	Ramirez, Deborah A.
<b>Grade:</b>	Honors

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**Course Description:**

In this course, students are introduced to the fundamental principles that guide the development, interpretation and analysis of the law of crimes. They are also exposed to the statutory texts—primarily the Model Penal Code, but also state statutes. In addition, students are introduced to the rules and principles used to apportion blame and responsibility in the criminal justice system. Finally, students examine the limits and potential of law as an instrument of social control.

**Performance Highlights:**

Overall, your performance in this class was excellent. On the exam, you did an excellent job of analyzing the Model Penal Code issues presented by the factual scenario in question one. On question two, you did a very good, and, at times excellent job of analyzing the federal search and seizure issues that might be raised by the attorneys for Cougar and Samuel. In particular, in the first question, you did an excellent job of analyzing Lucy's liability for the death of Stanley.

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<b>Date:</b>	5.31.2022 2:32PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	12917
<b>Course Title:</b>	Legal Skills in Social Context
<b>Course ID:</b>	LAW 6160
<b>Credits:</b>	2
<b>Term:</b>	Fall 2021 Law Semester
<b>Instructor :</b>	Bloom, Elizabeth M.
<b>Grade:</b>	Honors

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**Course Description:**

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

**Performance Highlights:**

Legal Skills in Social Context is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

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<b>Date:</b>	6.6.2022 1:37PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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<b>Student:</b>	Anastasia Moawde
<b>Exam #:</b>	12917
<b>Course Title:</b>	LSSC: Research & Writing
<b>Course ID:</b>	LAW 6165
<b>Credits:</b>	2
<b>Term:</b>	Fall 2021 Law Semester
<b>Instructor :</b>	Bloom, Elizabeth M.
<b>Grade:</b>	Honors

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**Course Description:**

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

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**Performance Highlights:**

LSSC: Research & Writing is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

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<b>Date:</b>	6.2.2022 3:05PM
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**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 12917  
**Course Title:** Property  
**Course ID:** LAW 6105  
**Credits:** 4  
**Term:** Fall 2021 Law Semester  
**Instructor :** Kelley, Melvin J.  
**Grade:** Pass

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**Course Description:**

This course covers the major doctrines in American property law, including trespass, servitudes, estates in land and future interests, landlord-tenant relationships, nuisance, and takings. Students are introduced to rules, policies, and current controversies.

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**Performance Highlights:**

Demonstrated knowledge of core U.S. Property Law doctrine and associated public policy considerations as well as a capacity to mobilize these insights to assess novel fact patterns. Solid participation in class discussions exhibiting skills in oral communication of case law.

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**Date:** 2.24.2022 1:54PM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 12917  
**Course Title:** Torts  
**Course ID:** LAW 6106  
**Credits:** 4  
**Term:** Fall 2021 Law Semester  
**Instructor :** Kahn, Jonathan D.  
**Grade:** Pass

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**Course Description:**

This course introduces students to theories of liability and the primary doctrines limiting liability, which are studied both doctrinally and in historical and social context. The course includes a brief consideration of civil remedies for intentional harms, but mainly focuses on the problem of accidental injury to persons and property. It also provides an introductory look at alternative systems for controlling risk and allocating the cost of accidents in advanced industrial societies.

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**Performance Highlights:**

Demonstrated a clear grasp of key tort principles and the contexts in which they apply.

Did a reasonable job of issue spotting and applying understandings of theories of responsibility and alternatives to evaluate and apply legal rules to specific situations.

Your analysis of legal problems was generally sound.

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**Date:** 2.1.2022 9:39AM

**Northeastern University School of Law**  
**416 Huntington Avenue**  
**Boston, Massachusetts 02115**

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**Student:** Anastasia Moawde  
**Exam #:** 12917  
**Course Title:** Civil Procedure  
**Course ID:** LAW 6100  
**Credits:** 5  
**Term:** Fall 2021 Law Semester  
**Instructor :** Williams, Lucy A.  
**Grade:** Pass

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**Course Description:**

Introduces students to the procedural rules that courts in the United States use to handle noncriminal disputes. Designed to provide a working knowledge of the Federal Rules of Civil Procedure and typical state rules, along with an introduction to federalism, statutory analysis, advocacy, and methods of dispute resolution. Examines procedure within its historical context.

**Performance Highlights:**

- You identified most of the issues.
- Your analysis reflected a basic understanding of the complex materials covered in the course.
- Your paper was well structured.

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**Date:** 1.20.2022 6:33PM

**Anastasia Moawde**

Newton, MA 02461 | moawde.a@northeastern.edu | 508-223-6646

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**WRITING SAMPLE**

The enclosed writing sample is a persuasive legal memorandum that I prepared as part of my first-year legal research and writing course. The objective of the assignment was to compose a brief memorandum advocating for the suppression of a juvenile's statements given during a custodial interrogation in Massachusetts. Although my professor provided minor edits to this memorandum, the majority of the writing and editing was my own contribution.

Moawde, Anastasia

COMMONWEALTH OF MASSACHUSETTS

JUVENILE COURT  
FRANKLIN COUNTY

CRIMINAL DOCKET  
NO. 19-022094

COMMONWEALTH OF MASSACHUSETTS  
V.  
KEVIN JOHNSON

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MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS  
DEFENDANT'S STATEMENT

INTRODUCTION

This case involves an involuntary statement made by Kevin Johnson, a high schooler, on March 1, 2021, due to an unknowing waiver of his *Miranda* rights. The officers failed to follow proper procedures for juvenile *Miranda* waivers, leading Kevin to waive his rights without fully understanding their meaning and importance. Given his age and lack of experience, Kevin was unable to independently make an informed decision to waive his rights. Furthermore, the officers conducted a coercive interrogation, manipulating Kevin into believing that confessing would benefit his future defense. They downplayed the seriousness of the interrogation, making it seem like a casual conversation with a friend. Exploiting Kevin's youth and impressionability, the officers coerced him into making a confession that aligned with their evidence.

The Motion to Suppress Kevin Johnson's statements to the police should be granted by the Court. To evaluate the grounds for relief, the Court should consider the totality of the circumstances, including whether the defendant knowingly, freely, and voluntarily waived their *Miranda* rights, and whether the defendant's statements were coerced or voluntary. *Commonwealth v. A. Juv.*, 521 N.E.2d 1368, 1371 (Mass. 1988) (establishing the elements of *Miranda* waivers by juveniles). The elements to grant suppression are independent of one another. *Id.*



Moawde, Anastasia

The Commonwealth bears the heavy burden of proving, beyond a reasonable doubt, that Kevin Johnson's waiver of *Miranda* rights was voluntary and that his statements were neither coerced nor involuntary. This burden recognizes the need for special protections for minors, who are vulnerable and susceptible to coercion by adults in uniform.

#### STATEMENT OF FACTS

Kevin Johnson, a vulnerable sixteen-year-old high school student, was forcefully removed from his classes and subjected to a coercive interrogation by two officers. Tr. 7. While Kevin was at school, two officers arrived and took him to the police station for a private questioning session. They informed Kevin that they had already spoken to his mother, who had declined to meet with them. *Id.* Shortly after that, they proceeded to recite his *Miranda* rights to him. Following the reading of his *Miranda* rights, the officers inquired whether Kevin wished to communicate with his mother. *Id.*

The interrogation occurred within a recreational room at the police station. *Id.* at 7. After settling in, the officers offered Kevin the option of speaking with his mother, which he declined. *Id.* at 9. Subsequently, they proceeded to read him his *Miranda* rights for the second time. *Id.* During the interrogation, the officers emphasized to Kevin that his cooperation was the key to securing his freedom. *Id.* at 11. They reassured him that the interrogation process would ultimately benefit his defense, repeatedly assuring him that they were acting in his best interests and supporting him. *Id.* at 11. The officers successfully convinced Kevin that it was acceptable if he had any involvement in the crime, emphasizing their need for the truth. *Id.* Kevin changed his responses to questions multiple times when the officers expressed dissatisfaction with his answers. *Id.* at 23.

Moawde, Anastasia

Furthermore, the officers informed Kevin that they were already fully aware of the precise sequence of events that transpired but required his confession. *Id.* at 11,15-17. When questioned about the victim's head, Kevin mistakenly mentioned his uncle cutting her hair, punching her head, and slashing her neck. *Id.* 17-20. Not satisfied with his answers, the officers inquired about the individual responsible for shooting the victim in the head, leading Kevin to mention a shooting for the first time during the interrogation. *Id.* at 19. Upon Kevin's arrest, he burst into tears and asked if he would only be detained for a couple of days. *Id.* at 25. Based on the facts presented, the Court should suppress Kevin's statements due to the violations of his Fifth Amendment rights.

### ARGUMENT

#### **I. KEVIN DID NOT GIVE A KNOWING, FREE, AND VOLUNTARY WAIVER OF HIS *MIRANDA* RIGHTS.**

Kevin Johnson did not provide a knowing, voluntary, and intentional waiver of his *Miranda* rights. Furthermore, he was not afforded a substantial opportunity to consult with his mother or another concerned adult who could have explained the significance of his *Miranda* rights, as recognized in *Commonwealth v. A. Juv.* 521 N.E.2d at 1371. The Court acknowledges the challenges faced by children in comprehending their *Miranda* rights and, therefore, permits them to communicate with a parent or guardian before relinquishing those rights.

Moreover, Kevin did not exhibit or possess a level of intellectual capacity that would supersede the requirement of involving an interested adult, as established in *Commonwealth v. King.* 460 N.E.2d 1299 (Mass. App. Ct. 1984). The Commonwealth failed to demonstrate that he had a substantial opportunity to consult with a knowledgeable adult or possessed the necessary level of intelligence to validly waive his *Miranda* rights.

Moawde, Anastasia

A. **Kevin Johnson was not given genuine opportunity to consult with an interested adult before his *Miranda* rights were read to him.**

The Motion to Suppress Kevin's statements should be granted by the Court due to compelling evidence supporting the claim that he did not provide a knowing, voluntary, and intentional waiver of his *Miranda* rights. In Massachusetts, when it comes to police interrogations involving juveniles, the presence of a parent or an interested adult is required. This allows the juvenile to have the opportunity to consult and receive guidance on their *Miranda* rights before deciding whether to waive them. *A. Juv.*, 521 N.E.2d at 1371. The purpose of this rule is to safeguard children from renouncing their rights without comprehending the ramifications of doing so. *Id.*

For a waiver of *Miranda* rights to be considered voluntary, the juvenile must have a genuine chance to consult with a parent, interested adult, or attorney, ensuring that the waiver is made knowingly and intelligently. *Commonwealth v. Alfonso A.*, 780 N.E.2d 1244, 1251 (Mass. 2003). In the case of *Commonwealth v. Alfonso A.*, the court determined that even though the juvenile was offered multiple opportunities to speak with his mother, a genuine opportunity was not provided as the officers offered him this chance only after reading his *Miranda* rights. *Id.* Moreover, a genuine opportunity cannot be a hypothetical option for the juvenile to utilize at a later time, but must be an immediately and clearly available opportunity before the juvenile waives their rights. *Id.*

In the present matter, Kevin Johnson was deprived of a legitimate opportunity to consult with a parent or an interested adult prior to waiving his *Miranda* rights. The officers took him from school and informed him that his mother had declined to meet with them. Following this, they immediately proceeded to read him his *Miranda* rights. At no point did the officers offer him the chance to speak with his mother before reciting his *Miranda* rights.

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It is crucial to differentiate between the officers asking whether the mother desired to be present and whether Kevin Johnson was given an opportunity to communicate with his mother. According to the interested adult rule, the juvenile must be granted the opportunity to converse with an interested adult, rather than the interested adult being given the chance to speak with the juvenile. *Id.* While Kevin was indeed offered the opportunity to speak with his mother, the offer only occurred after his *Miranda* warnings had already been read, rendering it a mere theoretical opportunity. *Id.*

The Prosecution may argue that Kevin had a legitimate opportunity to communicate with his mother through text messages before the officers arrived at the school. However, it should be noted that Massachusetts courts have consistently held that a genuine opportunity does not exist when there is no physical presence of a parent or guardian. In *Commonwealth v. Escalera*, the Court found the waiver of *Miranda* rights were valid because the juvenile was permitted to have a private meeting with his mother before the waiver. 876 N.E.2d 493, 495 (Mass. App. Ct. 2007).

Similarly, in *Alfonso A.*, it was determined that even though the juvenile was given the chance to speak with his mother before waiving his *Miranda* rights, this did not constitute a genuine opportunity since the mother was not physically present. 780 N.E.2d at 1252.

Furthermore, in *Commonwealth v. MacNeill*, it was concluded that a genuine opportunity was provided to the juvenile to consult with his grandfather because the grandfather was physically present during the interrogation. 502 N.E.2d 938 (Mass. 1987). These cases highlight the consistent requirement for the physical presence of a parent or guardian to establish a genuine opportunity for consultation in Massachusetts.

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B. **Kevin did not demonstrate a high degree of intelligence, experience, knowledge, or sophistication to overrule the interested adult rule.**

Kevin Johnson does not exhibit a sufficient level of intelligence to invalidate the requirement of consulting with an interested adult. In order for a waiver to be considered valid without such consultation, the juvenile must possess a high degree of intelligence, experience, knowledge, or sophistication, as established in *Commonwealth v. King*. 460 N.E.2d at 1305. However, given Kevin's age, educational challenges, and limited interactions with the police, it is apparent that he lacks the necessary level of intelligence to render the rule invalid.

The Prosecution may argue that Kevin's prior encounters with law enforcement provide him with enough experience to understand the implications of waiving his rights. Precedent cases like *King* support this argument, as the court determined that the juvenile comprehended the significance of waiving his *Miranda* rights based on his past interactions with the police. *Id.* However, in the *King* case, the juvenile had an extensive criminal record, indicating a high level of familiarity with police procedures. *Id.*

In contrast, Kevin's previous encounter involved a wrongful arrest for shoplifting, which resulted in his swift release after being read his *Miranda* rights. The incident in *King* differs significantly from the current situation, where Kevin is being interrogated for a murder charge, a much more serious offense. *Id.* Given the substantial disparities between these two encounters with the police, it would be unjust to assume that Kevin's previous experience provides him with the necessary intelligence or experience to satisfy the requirement. These facts clearly demonstrate that Kevin does not possess the required level of intelligence or experience to justify the admissibility of his statements without consulting with an interested adult, as determined in *King*. *Id.*

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Additionally, in certain situations, a suspect's outward behavior can provide evidence of their lack of understanding. In the legal sense, a confession is deemed as "knowing" only if the juvenile fully understands the significance of each *Miranda* warning. *Commonwealth v. Garcia*, 399 N.E.2d 460, 466 (Mass. 1980). In *Garcia*, the court determined that the juveniles' external behavior could indicate their understanding or lack thereof regarding the waiver of their *Miranda* rights. *Id.*

In the present case, Kevin Johnson displayed shock and began crying upon his arrest. Furthermore, he inquired whether his arrest would only last a few days, indicating a lack of understanding regarding the consequences of waiving his rights. Given these observations, it is likely that Kevin did not grasp the significance of his *Miranda* waiver, particularly when considering the totality of the circumstances.

## **II. KEVIN JOHNSON'S STATEMENTS TO THE POLICE WERE INVOLUNTARY AND COERCED, MAKING HIS STATEMENTS INVALID.**

The Motion to Suppress should be granted by the Court due to the Commonwealth's failure to establish the voluntariness of Kevin Johnson's statements. A statement is deemed valid when it is not coerced. *Commonwealth v. Daniels*, 321 N.E.2d 822, 827 (Mass. 1975). Coercion arises when questioning officers use suggestive or leading tactics to elicit desired answers, as outlined in *Commonwealth v. Meehan*, 387 N.E.2d 527, 563 (Mass. 1979). Additionally, if officers employ minimization techniques that excessively put the juvenile at ease during the interrogation process, the court may view the confession as involuntary. *Commonwealth v. DiGiambattista*, 813 N.E.2d 516, 523 (Mass. 2004).

It is crucial for the legal system to safeguard children from coercive practices by officers, considering their impressionable nature and vulnerability to intimidation. In the present case,

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Kevin is a child facing educational challenges, which renders him more susceptible to coercion.

Thus, in order to protect his rights, the court should grant the Motion to Suppress.

**A. The officers used coercive tactics during the interrogation, leading to inconsistent responses and a narrative conflicting with the physical evidence.**

The statements made by Kevin Johnson to the police were obtained through coercion and were therefore involuntary, rendering them inadmissible. *Meehan*, 387 N.E.2d at 563. This conclusion is supported by the ruling in *Meehan*, where the Court determined that statements are considered involuntary when an officer gives an explicit or implicit assurance that the statements will benefit the defense or result in a more lenient sentence. *Id.* In order for statements to be deemed valid, the police must conduct questioning in a manner that is not leading or suggestive of desired answers. *Id. Daniels*, 321 N.E.2d at 827 (finding that the defendant was not coerced or questioned in a manner that would lead to desired answers).

In Kevin Johnson's case, both expressed and implied assurances were given to him during the interrogation. In *Meehan*, where the court determined that the interrogation was coerced, the officers consistently conveyed to the defendant that telling the truth would benefit his defense and encouraged him to provide specific details. 387 N.E.2d at 563. Likewise, in Kevin's case, the officers explicitly informed him that cooperating and being truthful during the interrogation would be beneficial for him. They assured him that his cooperation would lead to his release.

Moreover, during the interrogation, when Kevin was unable to recall specific details about the victim's head, the officers subtly suggested the answers they desired. When Kevin repeatedly provided answers that did not satisfy the officers, one of them directly asked, "[w]ho shot her in the head?" This prompt led Kevin to mention for the first time that the victim was

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shot in the head. This exchange clearly demonstrates that the officers were guiding Kevin and coercing him into providing the specific details they wanted.

Furthermore, the officers provided Kevin with an implied assurance during the interrogation. *Daniels*, 321 N.E.2d at 827. The officers subjected Kevin to a barrage of repetitive questioning, placing undue pressure on him to alter his responses. The questioning ceased when Kevin provided incorrect information. By persisting with their inquiries, the officers implicitly conveyed an assurance, creating an environment in which Kevin eventually provided the desired information, influenced by the suggestive nature of the officers' questions. The glaring inconsistency between Kevin's responses and the physical evidence further underscores the coerced nature of his statements, clearly indicating that they were prompted and coerced by the officers.

By drawing parallels to the *Meehan* and *Daniels* case and outlining the officers' tactics in Kevin's case, it becomes apparent that the officers employed coercive methods during the interrogation. 387 N.E.2d 527. They provided assurances and suggested answers to manipulate Kevin into giving them the desired information, rendering his statements involuntary.

**B. The officers used minimization tactics which caused Kevin to feel a false sense of security.**

The officers employed tactics of minimization, creating a deceptive sense of safety for Kevin. When evaluating the admissibility of Kevin Johnson's statements, the court will examine the totality of the circumstances to determine whether the interrogators conveyed, either explicitly or implicitly, that confessing would result in a favorable outcome. *DiGiambattista*, 813 N.E.2d at 523; *Meehan*, 387 N.E.2d at 563 (establishing that a confession may be considered involuntary when law enforcement explicitly guarantees the defendant that their confession will yield



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favorable outcomes). The Court established that an assessment should be made as to whether an implied promise of leniency could lead an innocent individual to provide a false confession. *DiGiambattista*, 813 N.E.2d at 523. It is important to note that in Massachusetts, the use of trickery alone is not sufficient grounds for suppressing the statements. *Id.* Instead, the Court will consider it as part of the totality of the circumstances. *Id.*

In this case, the officers directly absolved Kevin of any responsibility. They explicitly informed Kevin that they believed Steven, his uncle and the primary suspect in the murder, was responsible for the crime, not Kevin himself. They went as far as assuring him unwavering support, regardless of his involvement in the incident. Furthermore, the officers consistently underscored that Kevin's statements were solely beneficial to his own interests, thereby deepening his misplaced trust in their motives. These statements created a false sense of security for Kevin, convincing him that anything he disclosed during the interrogation would serve as a means to escape legal consequences.

Additionally, the officers chose to conduct the interrogation in a recreational room instead of an official interrogation room, purportedly to make Kevin feel more at ease. The Prosecution might argue that this decision was made in light of Kevin's educational disabilities and young age, with the intention of creating a comfortable environment. However, in reality, the officers' choice of location was a manipulative tactic aimed at downplaying the seriousness of the interrogation. These tactics, coupled with Kevin's age and educational challenges, coerced him into providing inaccurate information in order to please the interrogators. As established in the cases of *DiGiambattista*, *Daniels*, and *Meehan*, such tactics and the overall circumstances surrounding the interrogation demonstrate that Kevin's statements to the police were not given

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voluntarily. *DiGiambattista*, 813 N.E.2d 516; *Daniels*, 321 N.E.2d 822; *Meehan*, 387 N.E.2d 527.

### CONCLUSION

In conclusion, the Motion to Suppress Kevin Johnson's statements to the police should be granted based on the numerous violations of his constitutional rights and the coercive tactics employed during the interrogation. The Commonwealth failed to demonstrate that Kevin knowingly, freely, and voluntarily waived his *Miranda* rights, as he was not provided a genuine opportunity to consult with a parent or interested adult before waiving his rights. Furthermore, Kevin did not exhibit a high degree of intelligence or experience to negate the requirement of consulting with an interested adult. The officers also used implied assurances, suggestive questioning, and minimization tactics to manipulate and coerce Kevin into providing self-incriminating statements.

Moreover, the officers' false sense of security, misleading statements about the involvement of another suspect, and the choice of an inappropriate interrogation setting all contributed to the involuntary nature of Kevin's statements. These factors, when considered in the totality of the circumstances, render his statements unreliable and inadmissible as evidence.

It is crucial to protect the rights of juveniles, especially those like Kevin with educational challenges, who are particularly vulnerable to coercive tactics. The courts in Massachusetts have consistently recognized the importance of safeguarding juveniles during interrogations and have established clear guidelines to ensure that their rights are upheld.

In light of the constitutional violations, the manipulative tactics employed by the officers, and the lack of voluntary and knowing waiver of rights, the Court should grant the Motion to

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Suppress Kevin Johnson's statements to the police. By doing so, justice will be served, and the integrity of the criminal justice system will be upheld.

Respectfully Submitted,

For the defendant  
Anastasia Moawde  
Dated: 04/08/2022

## Applicant Details

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## Applicant Education

BA/BS From	University of Houston-Main Campus
Date of BA/BS	June 2021
JD/LLB From	The University of Michigan Law School
	<a href="http://www.law.umich.edu/currentstudents/careerservices">http://www.law.umich.edu/currentstudents/careerservices</a>
Date of JD/LLB	May 6, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Michigan Technology Law Review
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	Yes
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Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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June 12, 2023

The Honorable Juan R. Sánchez  
United States District Court for the Eastern District of Pennsylvania  
14613 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106  
Courtroom 14-B

Dear Chief Judge Sánchez:

I am a rising third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2024–2025 term. I am currently working as a summer associate in Kirkland & Ellis’s New York office and four of my siblings live in Pennsylvania, so I would welcome the opportunity to remain in the area to begin my legal career.

Prior to law school, I received a B.S. in mathematics from the University of Houston, which sharpened my analytical abilities and problem-solving skills. This has served me well in law school and as a summer associate both this summer at Kirkland and last summer at Ahmad, Zavitsanos & Mensing (AZA), as well as during a recent externship with the Eastern District of New York. I have had the chance to gain substantive experience drafting opinions, briefs, and pleadings in these roles to complement what I have learned in law school. This experience has convinced me that clerking would be the best possible training for my future career as a litigator.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from Michigan Law School professors Bagley and McQuade, and AZA attorney Shahmeer Halepota, are also attached:

- Professor Nicholas Bagley: nbagley@umich.edu, (734) 615-7049
- Professor Barbara McQuade: bmcquade@umich.edu, (734) 763-3183
- Shahmeer Halepota: shalepota@azalaw.com, (713) 600-4953

Thank you for your time and consideration.

Respectfully,

Walla Mohamedali

## Walla Mohamedali

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### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI

*Juris Doctor*

Expected May 2024

Honors: Dean's Scholarship  
Activities: Associate Editor, Michigan Technology Law Review  
Executive Board, Muslim Law Students Association  
Executive Board, Privacy and Technology Law Association  
Peer Tutor, Contracts

#### UNIVERSITY OF HOUSTON

Houston, TX

*Bachelor of Science* in Mathematics, Minor in Psychology, *summa cum laude*

August 2018 - May 2021

Honors: Phi Beta Kappa  
Honors College  
Dean's Distinguished Scholars List 6/6 semesters  
Activities: Volunteer, PEEPS Food Pantry  
Research Assistant, "Presidential Policymaking in the First 100 Days"  
Pi Mu Epsilon, National Mathematics Honor Society

### EXPERIENCE

#### KIRKLAND & ELLIS (NEW YORK)

*Summer Associate*

May 2023 – July 2023

#### THE HON. JOAN AZRACK, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

*Intern*

February 2023 – April 2023

- Drafted reconsideration order re: the validity of an arbitration agreement following the enactment of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

#### LEXISNEXIS

*Lexis Associate*

August 2022 – Present

- Work closely with students and faculty in the use of LexisNexis' legal research tools
- Conduct trainings, table events, and office hours for students

#### AHMAD, ZAVITSANOS & MENSING

*Summer Associate*

May 2022 – July 2022

- Drafted complaint in breach of contract case in federal court
- Presented at mediation conference joint session in wrongful death action
- Drafted section of post-hearing brief on limitation of liability clause
- Drafted memorandum to client on indemnification
- Drafted expedited discovery requests and business record affidavits in conversion case
- Conducted legal research on numerous procedural and substantive topics

#### BODY TOGS, LLC

*Accounts Manager*

May 2021 – August 2021

- Developed business strategy through analysis of sales patterns and identification of trends in data

*Data Specialist*

June 2019 – May 2021

- Established excellent customer service through timely execution of order preparation and invoicing

#### UNIVERSITY OF HOUSTON

*Learning Services Specialist*

January 2020 – March 2020

- Coached student-athletes to improve time management and maintain focus, as well as tutoring as needed

*Peer Assistant*

May 2019 – March 2020

- Tutored student-athletes in math courses to ensure compliance with NCAA regulations; ensured students successfully enroll in first classes

### ADDITIONAL

Interests: Premier League soccer, NBA basketball, "Succession"



